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OF
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THE FRAMING OF INDIA'S CONSTITUTION
A STUDY



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PREFACE

This volume contains the documents relating to the stage culminating in the drafting of India's Constitution.

By August 1947, the Constituent Assembly and its committees had completed a great deal of the work of settling the broad principles of the Constitution. The Advisory Committee on Fundamental Rights and Minorities, the Union Powers Committee, the Union Constitution Committee and the Provincial Constitution Committee had made their recommendations; and these had been discussed in the Assembly and decisions taken.

The Assembly then turned its attention to the question of drafting. On August 29, 1947, it adopted a resolution appointing a Drafting Committee

to scrutinize the draft of the text of the Constitution of India prepared by the Constitutional Adviser giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the Committee.

The Constitutional Adviser prepared, by October 1947, what he called "the first draft of the Constitution of India". This draft was considered by the Drafting Committee in a series of meetings held between October 1947 and February 1948 and extensively revised. The Draft Constitution as settled by the Committee contained 315 articles and eight schedules and was submitted to the President of the Assembly on February 21, 1948.

During this period there also took place discussions on certain important aspects of the framework of the Constitution. There was the report of the Committee on Chief Commissioners' Provinces; an expert committee was appointed to consider the financial provisions to be included in the Constitution; two sub-committees, one on the excluded and tribal areas in Assam and the other on the excluded and partially excluded areas in the other Provinces of India, concluded their labours and submitted their recommendations. In framing the Constitution of October 1947 the Constitutional Adviser took into account the recommendations of the two committees on excluded and partially excluded areas and the tribal areas of Assam. The Drafting Committee considered the proposals of the other two

committees as well in finalizing its Draft Constitution of February, 1948.

This volume contains the important documents relating to the drafting of the Constitution and the reports of these committees. These documents are arranged in six parts. The first part contains the text of the Draft Constitution as prepared by the Constitutional Adviser in October 1947. In this part are also included notes on some of the clauses of the draft prepared by him, and some notes by Alladi Krishnaswami Ayyar and by D. P. Khaitan, both members of the Drafting Committee. There is also a report by the Constitutional Adviser on the details of his discussions with President Truman of the U.S.A. and President de Valera of Ireland and eminent jurists and constitutional experts in the course of his visit to the U.S.A., Canada, Ireland and the United Kingdom in November-December 1947.

The second part contains papers relating to the work of the Committee on Chief Commissioners' Provinces.

The third part includes papers bearing on the work of the Expert Committee on the Financial Provisions.

The fourth part contains the minutes of the meetings of the Drafting Committee from August 1947 to February 1948.

In the fifth part is reproduced the text of the Draft Constitution as settled by the Drafting Committee and published in February 1948.

In the sixth part are reproduced the reports of the sub-committees on the Excluded and Tribal Areas in Assam and the Excluded and Partially Excluded Areas in the other Provinces of India.

NEW DELHI:
June 16, 1967.

J. N. KHOSLA

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PART ONE
FIRST DRAFT CONSTITUTION
October 1947

DRAFT CONSTITUTION PREPARED BY THE
CONSTITUTIONAL ADVISER
October 1947

[As a preliminary to the drafting of the Constitution, the Constituent Assembly appointed a number of committees to consider and report on various important matters for which provision had to be made in the Constitution. The committees so appointed were the Advisory Committee on Fundamental Rights, Minorities etc., the Union Powers Committee, and the Union and the Provincial Constitution Committees. These committees submitted their reports during the period April to August 1947. By August 1947, the broad principles as set out in the recommendations of these committees had been discussed in the Assembly. (For the reports of these committees see Volume II.)

In pursuance of a recommendation of the Order of Business Committee [see Vol. I, Document No. 81(iii)] which was subsequently adopted by the Constituent Assembly on July 14, 1947, the Constitutional Adviser undertook the preparation of a draft of the Constitution embodying the various decisions of the Assembly on the reports of its committees. In this task he was assisted by S. N. Mukerjee, Joint Secretary and Draftsman. Where the Constituent Assembly had not considered any matter, the recommendations of the relevant committees were incorporated; and in other cases appropriate provisions were included in the draft. This draft, containing 240 clauses and 13 schedules, was ready by October 1947. Almost every clause had a marginal note giving the references to the corresponding provisions in other constitutions or in the Government of India Act of 1935. The draft was placed before the Drafting Committee when it met on October 27. In all subsequent deliberations of the committee this draft constituted the basic document and its working paper. The text of the draft, explanatory notes on certain clauses by B. N. Rau, and suggestions and comments from K. M. Munshi, Alladi Krishnaswami Ayyar and D. P. Khaitan are reproduced below.]

(I) TEXT OF THE DRAFT CONSTITUTION
October 1947

[*Note*: The provisions italicised have not yet been considered or adopted by the Constituent Assembly. The other provisions are based on decisions already taken by the Constituent Assembly, although these have had to be occasionally supplemented and made more definite. These supplemental provisions have not always been italicised.]

P R E A M B L E

We, the people of India, seeking to promote the common good, do hereby, through our chosen representatives, enact, adopt and give to ourselves this Constitution.

PART I—THE FEDERATION AND ITS TERRITORY AND
JURISDICTION

*Name and
territory of
Federation.*

1. (I) *As from the date of commencement of this Constitution "India" shall be a Federation.*

(2) *The territories of the Federation shall consist of—*

(a) *the Provinces, hereinafter called Governors' Provinces,*

(b) *the Provinces, hereinafter called Chief Commissioners' Provinces, and*

(c) *the Indian States for the time being included in the First Schedule to this Constitution, hereinafter called Federated States.*

(3) *On and after such date as may be appointed in this behalf by Act of the Federal Parliament, each unit of the Federation shall be called a "State".*

*Admission of
new territory.
[Cf. Common-
wealth of
Australia
Constitution
Act, s. 121,
U.S.A. Consti-
tution (1787),
Art. IV, s. 3(1).]*

2. *The Federal Parliament may from time to time by Act include new territories in the First Schedule to this Constitution on such terms as it thinks fit and as from the date of commencement of such Act, that Schedule shall have effect as if those territories had been included therein.*

*Creation of
new units
and alteration
of areas or
boundaries
or names of
existing units.
[Cf. Govt.*

3. (I) *The Federal Parliament may, with the previous consent of the Legislature of every Province and the Legislature of every Indian State whose boundaries are affected thereby, by Act—*

(a) *create a new unit;*

(b) *increase the area of any unit;*

- (c) diminish the area of any unit ;
- (d) alter the boundaries of any unit ;
- (e) alter the name of any unit ;

of India
Act, 1935,
s. 290.]

and may with the like consent make such incidental and consequential provisions by such Act as it may deem necessary or proper.

(2) When any such Act creates a new unit, then as from the date of commencement of the Act that unit shall be deemed to be included in the First Schedule to this Constitution, and when provision is made by any such Act for the alteration of the area or the boundaries or the name of any unit, then as from the date of commencement of the Act any reference in that schedule to that unit shall be construed as a reference to the unit as so altered.

PART II—CITIZENSHIP

4. In this Part, unless the context otherwise requires, the expression "Federal law" includes any existing law as in force for the time being.

Interpretation.

5. At the date of commencement of this Constitution, every person—

(a) who, or either of whose parents, or any of whose grandparents was born in the territories included on that date within the Federation, or

(b) who on that date has his domicile in those territories,

Citizenship at the date of commencement of the Constitution. [Cf. Constitution of Irish Free State, 1922, Art. 3.]

shall be a citizen of the Federation :

Provided that where any such person is a citizen of another State, he may, in accordance with the provisions made in that behalf by any Federal law, elect not to accept the citizenship conferred by this section.

Explanation: A person shall, for the purposes of this section, be deemed to have his domicile in any territory if he has a domicile therein within the meaning of Part II of the Indian Succession Act, 1925 :

Act
XXXIX
of 1925.

Provided that notwithstanding anything contained in section 11 of the said Act, a person shall, for the purposes of this section, be deemed to have acquired a domicile in the territories included within the Federation if—

- (a) before the date of commencement of this Constitution he has made and deposited in some office within those territories appointed for the purpose

by the Provincial Government a declaration in writing under his hand of his desire to acquire such domicile, and

(b) he has been resident within those territories for a period of not less than one month immediately preceding the time of his making such declaration.

Citizenship after the commencement of the Constitution.

[Cf. British Nationality and Status of Aliens Act, 1914 (4 & 5, Geo. 5 c. 17) s. 1(1).]

6. *After the commencement of this Constitution—*

(a) any person who is born in the territories of the Federation not being the child of an alien having diplomatic immunity therein or otherwise not subject to its jurisdiction ;

(b) any person either of whose parents was at the time of that person's birth a citizen of the Federation and who fulfils any of the following conditions, namely :

(i) such parent was born within the territories of the Federation ; or

(ii) such parent had become a citizen of the Federation by naturalization or by reason of inclusion of new territory ; or

(iii) such parent was at the time of such person's birth in the service of the Federation ; or

(iv) such person's birth was registered in accordance with the provisions of any Federal law ;

(c) any person who is naturalized in accordance with the provisions of any Federal law ;

(d) any person born on board a ship of the Federation, whether in foreign territorial waters or not ;

shall be a citizen of the Federation.

6A. *Any person who is under any acknowledgment of allegiance or adherence to a foreign power or is a subject or citizen or entitled to the rights and privileges of a subject or a citizen of a foreign power shall be disqualified for being chosen as and for being a member of either House of the Parliament of the Federation or of the Legislature of any unit.*

Foreign nationals to be disqualified for membership of the Federal Parliament or the Legislature of any unit. [Cf. S.44(i) Commonwealth of Australia Act.]

Acts of the Federal Parliament may regulate the right of citizenship.

7. *Further provision may be made by Federal law for regulating the acquisition and termination of citizenship of the Federation and in particular for avoiding double citizenship and the provisions of sections 5, 6 and 6A shall have effect subject to the provisions of any such law.*

PART III—FUNDAMENTAL RIGHTS INCLUDING DIRECTIVE
PRINCIPLES OF STATE POLICY

Chapter I—General

8. In this Part, unless the context otherwise requires,—

Definitions.

(1) "Federal law" includes any existing law as in force for the time being;

(2) "the State" includes the Government and the Legislature of the Federation and of each unit and all local or other authorities within the territories of the Federation.

9. (1) All laws in force immediately before the commencement of this Constitution in the territories included within the Federation, in so far as they are inconsistent with any of the provisions of Chapter II of this Part, shall, to the extent of such inconsistency, be void.

Savings.

(2) Nothing in this Constitution shall be taken to empower the State to make any law which curtails or takes away or which has the effect of curtailing or taking away any of the rights conferred by Chapter II of this Part except by way of amendment of this Constitution under section 232 and any law made in contravention of this sub-section shall, to the extent of the contravention, be void.

[Cf. U.S.A. Constitution, (1868), Art. XIV, s. 1.]

(3) In this section, the expression "law" includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territories of the Federation.

10. The principles of policy set forth in Chapter III of this Part are intended for the guidance of the State. While these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Application of the Principles set forth in Chapter III.
[Cf. Irish Constitution, Art. 45.]

Chapter II—Fundamental Rights

Rights of equality

11. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.

Prohibition of discrimination on grounds of religion, race, caste or sex.

In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment, or

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of the revenues of the State or dedicated to the use of the general public.

(2) Nothing in this section shall prevent the State from making any special provision for women and children.

Equality of opportunity in matters of public employment.
[Cf. Government of India Act, 1935, ss. 275 & 298.]

12. (1) There shall be equality of opportunity for all citizens in matters of employment under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State.

(3) Nothing in this section shall prevent the State from making any provision for the reservation of appointments or posts in favour of any particular classes of citizens who, in the opinion of the State, are not adequately represented in the services under the State.

(4) Nothing in this section shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Abolition of untouchability.

13. "Untouchability" in any form is abolished and the imposition of any disability on that account shall be an offence which shall be punishable in accordance with law.

Abolition of titles.
[Cf. Irish Constitution, Art. 40(2) and U.S.A. Constitution (1787), Art. I, s. 9(8).]

14. (1) No title shall be conferred by the Federation.

(2) No citizen of the Federation shall accept any title from any foreign State.

(3) No person holding any office of profit or trust under the State shall, without the consent of the Federal Government, accept any present, emolument, title or office of any kind from or under any foreign State.

Rights of freedom

Protection of certain rights regarding freedom of speech, etc.
[Cf. Irish Constitution, Art. 40(6), Constitution of Danzig, Art. 75.]

15. (1) There shall be liberty for the exercise of the following rights subject to public order and morality, namely:

(a) the right of every citizen to freedom of speech and expression;

(b) the right of the citizens to assemble peaceably and without arms;

(c) the right of the citizens to form associations or unions;

(d) the right of every citizen to move freely throughout the territories of the Federation;

(e) the right of every citizen to reside and settle in any part of the territories of the Federation, to acquire, hold and dispose of property and to practise any profession or to carry on any occupation, trade or business.

(2) Nothing in this section shall restrict the power of the State to make any law or to take any executive action which under this Constitution it has power to make or to take, during the period when a Proclamation of Emergency issued under sub-section (1) of section 182 is in force, or, in the case of a unit during the period of any grave emergency declared by the Government of the unit whereby the security of the unit is threatened.

(3) Nothing in this section shall affect the operation of any law which in the interests of the public including the interests of minorities and special tribes imposes restrictions on the exercise of any of the rights conferred by this section.

16. No person shall be deprived of his life or personal liberty without due process of law, nor shall any person be denied equality before the law within the territories of the Federation.

Protection of life and liberty and equality before law.
[Cf. U.S.A. Constitution (1868), Art. XIV, S. I, Irish Constitution, Arts. 40(1) & 40(4).]

17. Subject to the provisions of any Federal law, trade, commerce and intercourse among the units shall, if between the citizens of the Federation, be free :

Provided that nothing in this section shall prevent any unit from imposing on goods imported from other units any tax to which similar goods manufactured or produced in that unit are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced :

Freedom of trade, commerce and intercourse among the units.
[Cf. Commonwealth of Australia Constitution Act, ss. 92 and 99, Government of India Act, 1935, s. 297.]

Provided further that no preference shall be given by any regulation of trade, commerce or revenue to one unit over another :

Provided also that nothing in this section shall preclude the Federal Parliament from imposing by Act restrictions on the freedom of trade, commerce and intercourse among the units in the interests of public order, morality or health or in cases of emergency.

Prohibition of traffic in human beings and forced labour.

18. *Traffic in human beings and bégar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law :*

Provided that nothing in this section shall prevent the State from imposing compulsory service for public purposes without any discrimination on the ground of race, religion, caste, or class.

Prohibition of employment of children in factories, etc.

19. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Rights relating to religion

Freedom of conscience and free profession, practice and propagation of religion.

[Cf. Irish Constitution, Art. 44(2)1°.]

20. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Explanation I : The wearing and carrying of *Kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation II : The rights conferred by this sub-section shall not include any economic, financial, political or other secular activities which may be associated with religious practice.

(2) Nothing in this section shall preclude the State from making laws for social welfare and reform and for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

Freedom to manage religious affairs and to own, acquire and administer properties for religious or charitable purposes.

[Cf. Irish Constitution, Art. 44(2)5°.]

21. Every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion and, in accordance with the provisions of law, to own, acquire and administer property, movable or immovable, and to establish and maintain institutions for religious or charitable purposes.

Freedom as to payment of taxes for promotion and maintenance of any particular religion or religious denomination.

[Cf. Swiss Constitution, Art. 49, last para.]

22. No person may be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

23. *No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in any religious instruction that may be imparted in the school or to attend any religious worship that may be conducted in the school or in any premises attached thereto.*

Freedom as to attendance at religious instructions or religious worship in certain schools. [Cf. Irish Constitution, Art. 44(2)4°.]

Cultural and educational rights

24. (1) The interests of minorities in the territories of the Federation in respect of their language, script and culture shall be protected and no law shall be passed or executive action taken by the State which may affect prejudicially the right conferred by this sub-section.

Protection of the interests of minorities.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.

(3) (a) All minorities whether based on religion, community or language shall be free to establish and administer educational institutions of their choice.

(b) The State shall not, in granting aid to schools, discriminate against schools which are under the management of minorities whether based on religion, community or language.

Miscellaneous rights

25. (1) No person shall be deprived of his property save by authority of law.

Compulsory acquisition of property. [Cf. Govt. of India Act, 1935, s. 299.]

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined.

26. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence.

Protection in respect of conviction of offences. [Cf. Irish Constitution, Art. 38(1), and U.S.A. Constitution (1791), Art. V.]

(2) No person shall be punished for the same offence more than once nor, *save as provided in section 132 of the Indian Evidence Act, 1872 as in force at the commencement of this Constitution*, shall any person be compelled in any

Rights in respect of public acts, records and judicial proceedings. [Cf. U.S.A. Constitution (1787), Art. IV, s. 1.]

criminal case to be a witness against himself.

27. (1) Full faith and credit shall be given throughout the territories of the Federation to public acts, records and judicial proceedings of the Federation and of every unit, and the manner in which and the conditions under which such acts, records, and proceedings shall be proved and the effect thereof determined shall be as provided by law.

(2) Final judgments or orders delivered or passed by civil courts in any part of the territories of the Federation shall be capable of execution anywhere within those territories according to law.

Rights to constitutional remedies

Remedies for enforcement of rights guaranteed in this chapter.

28. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights provided for in this chapter is guaranteed.

(2) Such right shall not be suspended except when a Proclamation of Emergency issued under sub-section (1) of section 182 is in force, or a grave emergency, declared by the Government of any unit whereby the security of the unit is threatened, exists.

Power to Federal Parliament to modify the rights guaranteed in this chapter in their application to forces.

29. The Federal Parliament may by Act determine to what extent any of the rights guaranteed in this chapter shall in their application to the members of the armed forces or the forces charged with the maintenance of public order be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

Legislation to give effect to the provisions of this chapter.

30. As soon as may be after the commencement of this Constitution provision shall be made by Act of the Federal Parliament—

(a) for those matters which under this chapter are required to be provided for by legislation in so far as provision with respect to such matters has not been made in any existing law; and

(b) for prescribing punishments for those acts which are declared to be offences under this chapter and are not punishable under any existing law.

Chapter III—Directive Principles of State Policy

State to secure a social order for the promotion and welfare of the people. [Cf. Irish Constitution, Art. 45(1).]

31. The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

32. The State shall, in particular, direct its policy towards securing—

- (i) that the citizens, men and women equally, have the right to an adequate means of livelihood ;
- (ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;
- (iii) that the operation of free competition does not result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment ;
- (iv) that there is equal pay for equal work for both men and women ;
- (v) that the strength and health of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength ;
- (vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

33. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement, and other cases of undeserved want.

34. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

35. The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

36. The State shall endeavour to secure for the citizens a uniform civil code.

37. Every citizen is entitled to free primary education, and it shall be the duty of the State to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory primary education for all children until they complete the age of fourteen years.

Certain principles of policy to be followed by the State.
[Cf. Irish Constitution, Arts. 45(2) and 45(4)2°; U.S.S.R. Constitution, Art. 122; Constitution of Danzig, Art. 83.]

Right to work, to education and to public assistance in certain cases.

Provision for just and humane conditions of work and maternity relief.
Living wage, etc., for workers.

Uniform civil code for the citizens.

Provision for free primary education.

Promotion of educational and economic interests of Scheduled Castes, aboriginal tribe and other weaker sections.

Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

Protection, preservation and maintenance of monuments, places and objects of national importance.

Promotion of international peace and security.
[Cf. The Declaration of Havana, 1939.]

Head of the Federation.

Election of President.

38. *The State shall promote with special care the educational and economic interests of the weaker sections of people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.*

39. *The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.*

40. *It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Federal law to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to Federal law all such monuments or places or objects.*

41. *The State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organised people with one another.*

PART IV

Chapter I—The Federal Executive *The President*

42. *The head of the Federation shall be the President (Rashtrapati) who shall be elected in the manner provided in the next succeeding section.*

43. (1) *The President shall be elected by the members of an electoral college consisting of—*

(a) *the elected members of both Houses of the Federal Parliament, and*

(b) *the elected members of the Legislatures of the units.*

(2) *For the purpose of securing uniformity in the scale of representation of the different units at such election, the votes of the elected members of the Federal Parliament and of the Legislature of each unit shall be weighted in the*

following manner, namely :

- (a) the population of each unit shall be divided by the total number of elected members of the Legislature of the unit ;
- (b) each such member shall have as many votes as there are multiples of one thousand in the quotient so obtained ;
- (c) if after taking the multiples of one thousand, the remainder is not less than five hundred, then the vote of each member shall be further increased by one;
- (d) the average of the number of votes assigned to the members of the Legislatures of the units under the foregoing provisions, that is to say, the total number of votes assigned to such members divided by the total number of such members, shall be the number of votes to be assigned to each member of either House of the Federal Parliament, fractions exceeding one-half being counted as one and other fractions being disregarded.

Or alternatively,—

(2) For the purpose of securing uniformity in the scale of representation of the units at such election, the number of the elected members which the Legislature of each unit should have on the scale of one member for every lakh of the population of the unit shall first be calculated disregarding any fraction in such calculation ; and if the total number of elected members exceeds the number of members so calculated, the excess shall be excluded by lot, and only the remaining elected members shall be deemed to be the members of the electoral college for the purpose of the election of the President under sub-section (1).

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation : In this section, the expression “the Legislature of a unit” means, where the Legislature is bicameral, the Lower House of the Legislature and the expression “population” means the population as ascertained at the last preceding decennial census.

44. The President shall hold office for a term of five years from the date on which he enters upon his office :

*Term of office
of President.*

Provided that—

- (a) a President may, by resignation under his hand

addressed to the Chairman of the Council of States and the Speaker of the House of the People, resign his office;

(b) a President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in section 49;

(c) a President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

45. A person who holds, or who has held, office as President shall be eligible for re-election to that office once, but only once.

46. (1) No person shall be eligible for election as President unless he—

(a) is a citizen of the Federation,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office or position of emolument under the Federal Government or the Government of any unit or under any local or other authority subject to the control of either Government.

47. (1) The President shall not be a member either of the Federal Parliament or of the Legislature of any unit, and if a member of the Federal Parliament or of the Legislature of any unit be elected President, he shall be deemed to have vacated his seat in the Federal Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as President.

(2) The President shall not hold any other office or position of emolument.

(3) The President shall have an official residence and there shall be paid to the President such emoluments and allowances as may be determined by Act of the Federal Parliament and until provision in that behalf is so made, the President shall receive such emoluments and allowances as are specified in the Second Schedule to this Constitution.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

48. Every President and every person acting as President shall enter upon his office after making and subscribing in the presence of the members of both Houses of the

Eligibility for re-election.

[Cf. Irish Constitution, Art. 12(3)2°.]

Qualifications for election as President.

[Cf. Irish Constitution, Art. 12(4)1°.]

Conditions of President's office.

[Cf. Irish Constitution, Arts. 12(6), and 12(11).]

Declaration by the President before entering office.

Federal Parliament a declaration according to the form set out in that behalf in the Third Schedule to this Constitution.

49. (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of the Federal Parliament, but *no proposal to prefer such charge shall be entertained by that House except upon a notice of motion in writing signed by not less than thirty members of the House and no such proposal shall be adopted by that House except upon a resolution of that House supported by not less than two-thirds of the total membership of the House.*

[Cf. Irish Constitution, Art. 12(8).]
Procedure for impeachment of the President.
[Cf. Irish Constitution, Art. 12(10).]

(2) When a charge has been so preferred by either House of the Federal Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(3) If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

50. (1) An election to fill the vacancy occurring at the end of the term of office of a President shall be held before the date of expiration of the term.

Time of holding elections to fill vacancies in the office of the President and the term of office of persons elected to fill casual vacancies.
[Cf. Irish Constitution, Art. 12(3) 3°.]

(2) An election to fill a vacancy occurring by reason of the death, resignation or removal of the President shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall be entitled to hold office for the full term of five years as provided in section 44.

51. (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or when the President is unable to discharge his functions owing to absence, illness or any other cause, his functions shall be discharged by the Vice-President until the date on which a new President elected in accordance with the provisions of this chapter to fill such vacancy enters upon his office or until the date on which the President resumes his duties, as the case may be.

The Vice-President of the Federation.

(2) The Vice-President shall be elected by the members

of both Houses of the Federal Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(3) The Vice-President shall, subject to the proviso to sub-section (1) of section 64, be the *ex-officio* Chairman of the Council of States and shall not hold any other office or position of emolument.

(4) The Vice-President shall not be a member either of the Federal Parliament or of the Legislature of any unit and if a member of the Federal Parliament or of the Legislature of any unit be elected Vice-President, he shall be deemed to have vacated his seat in the Federal Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as Vice-President.

(5) No person shall be eligible for election as Vice-President unless he—

(a) is a citizen of the Federation,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the Council of States.

(6) A person shall not be eligible for election as Vice-President if he holds any office or position of emolument under the Federal Government or the Government of any unit or under any local or other authority subject to the control of either Government.

(7) The Vice-President shall hold office for a term of five years from the date on which he enters upon his office: Provided that—

(a) a Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(8) An election to fill the vacancy occurring at the end of the term of office of a Vice-President shall be held before the date of expiration of the term.

(9) An election to fill a vacancy occurring by reason of the death, resignation or removal of a Vice-President shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill such vacancy shall be entitled to hold office for the full term of five years as provided in sub-section (7).

52. (1) *All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court of India whose decision shall be final.*

Matters relating to or connected with the election of a President or a Vice-President.
[Cf. Irish Constitution, Art. 12(5).]

(2) Subject to the provisions of this Constitution, Acts of the Federal Parliament may regulate any matter relating to or connected with the election of a President or Vice-President.

53. (1) Subject to the provisions of this Constitution, the executive authority of the Federation shall be vested in the President and may be exercised by him either directly or through persons acting under his authority.

Executive authority of the Federation and the functions of the President.
[Cf. Government of India Act, 1935, ss. 7 and 295; Irish Constitution, Arts. 13(4) and 13(6).]

(2) Without prejudice to the generality of the foregoing provision—

(a) the supreme command of the Defence Forces of the Federation shall be vested in the President;

(b) the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence shall be vested in the President—

(i) in all cases where the conviction is by a Court Martial;

(ii) where the conviction is by a court other than a Court Martial, in the case of offences against Federal laws relating to matters with respect to which the Federal Parliament has, and the Legislature of the unit in which the person is convicted has not, the power to make laws:

Provided that nothing in this clause shall affect any power of any officer of the Armed Forces of the Federation to suspend, remit or commute a sentence passed by a Court Martial;

(c) where any person has been sentenced to death in a Province, the President shall have all such powers of suspension, remission or commutation of the sentence as are vested in the Provincial Government under the Code of Criminal Procedure, 1898.

(3) Nothing in this section shall prevent the Federal Parliament from conferring functions on authorities other

Act V of 1898.

than the President, or be deemed to transfer to him any functions conferred by any existing law on any Provincial Government, court, officer, or local or other authority.

Extent of executive authority of the Federation.
[Cf. Government of India Act, 1935, s. 8.]

54. (1) Subject to the provisions of this Constitution, the executive authority of the Federation shall extend—

(a) to the matters with respect to which the Federal Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Federation by virtue of any treaty or agreement:

Provided that the said authority does not, save as expressly provided in this Constitution, extend in any unit to matters with respect to which the Legislature of the unit has power to make laws.

(2) Notwithstanding anything contained in this section a unit and any officer or authority thereof may, until otherwise provided by the Federal Parliament or other competent authority, continue to exercise, in matters with respect to which the Federal Parliament has power to make laws for that unit, such executive authority or functions as the unit or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Administration of Federal Affairs

Council of Ministers.
[Cf. Government of India Act, 1935, s. 9.]

55. There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

Other provisions as to Ministers.
[Cf. Government of India Act, 1935, s. 10, and Irish Constitution, Art. 28(1).]

56. (1) The Prime Minister shall be chosen and summoned by the President and the other Ministers shall be chosen by the President on the advice of the Prime Minister; and all the Ministers shall hold office during the pleasure of the President.

(2) The Ministers shall before entering upon their offices make a declaration in the presence of the President according to the form set out in that behalf in the Third Schedule to this Constitution.

(3) The Council shall be collectively responsible to the House of the People.

(4) A Minister who for any period of six consecutive months is not a member of either House of the Federal Parliament shall at the expiration of that period cease to be a Minister.

(5) The salaries of Ministers shall be such as the Federal

Parliament may from time to time by Act determine and, until the Parliament so determine, shall be as specified in the Second Schedule to this Constitution:

Provided that the salary of a Minister shall not be varied during his term of office.

(6) The question whether any, and if so, what advice was tendered by Ministers to the President shall not be inquired into in any court.

57. (1) The President shall appoint a person, being a person qualified to be appointed a judge of the Supreme Court, to be Advocate-General for the Federation.

Advocate-General for the Federation.

[Cf. Government of India Act, 1935, s. 16.]

(2) It shall be the duty of the Advocate-General to give advice to the Federal Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force; and in the performance of his duties the Advocate-General shall have right of audience in all courts in any Governor's or Chief Commissioner's Province and, in a case in which the interests of the Federation are concerned, in all courts in any Federated State.

(3) The Advocate-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

58. (1) All executive action of the Federal Government shall be expressed to be taken in the name of the President.

Conduct of business of Federal Government.

[Cf. Government of India Act, 1935, ss. 17(1) and 17(2).]

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

Chapter II—The Federal Parliament General

59. The legislative power of the Federation shall be vested in the Parliament of the Federation which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People (in this Constitution referred to as "the Federal Parliament" or "the Parliament").

Constitution of the Federal Parliament.

[Cf. The Commonwealth of Australia Constitution Act, Ch. I, s. 1; Government of India Act, 1935, s. 18 (1).]

*Composition of
Houses of the
Federal
Parliament.*

[Cf. Irish Con-
stitution, Art.
18 (7).]

60. (1) The Council of States shall consist of not more than one-half of the total number of members of the House of the People of whom—

(a) not more than twenty-five members shall be chosen from panels of candidates constituted under sub-section (2); and

(b) the remainder shall be representatives of the units:

Provided that the total number of representatives of Indian States shall not exceed forty *per centum* of this remainder.

(2) Before the first general election and, thereafter, before each biennial election to the Council of States under sub-section (9) five panels of candidates shall be formed which shall respectively contain the names of persons having knowledge or practical experience of the following interests and services, namely :

(a) National language and culture, literature, art, education and such professional interests as may be defined by Act of the Federal Parliament;

(b) agriculture and allied interests;

(c) labour;

(d) industry and commerce including banking, finance, accountancy, engineering and architecture;

(e) public administration and social services.

(3) Each panel of candidates constituted under sub-section (2) shall contain at least twice the number to be elected from such panel.

(4) For bye-elections, sub-sections (2) and (3) shall have effect subject to such adaptations and modifications as may be prescribed by Act of the Federal Parliament.

(5) (a) The House of the People shall consist of not more than five hundred representatives of the people of the territories of the Federation directly chosen by the voters on the basis of adult suffrage in territorial constituencies delimited by or under Acts of the Federal Parliament and until they are so delimited, in the territorial constituencies specified in the Fourth Schedule to this Constitution:

Provided that seats shall be reserved in the House of the People for—

(i) the Muslim community and the Scheduled Castes;

(ii) the Scheduled Tribes in every Governor's Province;
and

(iii) the Indian Christian community in the Provinces of Madras and Bombay,

according to the scale prescribed in clause (b) of this sub-section :

Provided further that if the President is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, he may nominate not more than two members of the community to the House of the People.

(b) The number of representatives to be chosen for each territorial constituency shall be on a scale of not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population of the constituency :

Provided that the ratio of the total number of representatives of the Indian States to the total population of such States shall not exceed the ratio of the total number of representatives of the Governors' and Chief Commissioners' Provinces to the total population of such Provinces.

(5-A) Notwithstanding anything contained in sub-section (5), the Andaman and Nicobar Islands shall be represented in the House of the People by a single member to be nominated by the President.

(6) The ratio between the number of members to be chosen under sub-section (5) at any time for any constituency and the population of that constituency as ascertained at the last preceding census shall, as far as practicable, be the same for all constituencies throughout the Federation.

[Cf. Irish Constitution, Art. 16(2)3°.]

(7) Until otherwise provided by Act of the Federal Parliament all matters relating to or connected with elections to either House of the Federal Parliament shall be regulated by the relevant provisions of the Fourth Schedule to this Constitution.

(8) Upon the completion of each decennial census the representation of the several units in the Council of States and of the several territorial constituencies in the House of the People shall be readjusted by such authority, in such manner and with effect from such date as the Federal Parliament may by Act determine :

[Cf. Irish Constitution, Art. 16(2)4°.]

Provided that such readjustment shall not affect representation to the House of the People until the dissolution of the then existing House.

(9) The Council of States shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every second year

[Cf. Government of India Act, 1935, s. 18(4).]

in accordance with the provisions in that behalf contained in the Fourth Schedule to this Constitution.

[Cf. Government of India Act, 1935, s. 18 (5).]

(10) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as the dissolution of the House:

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not extending in any case beyond the period of six months from the expiry of the period of the emergency.

(11) Where Indian States are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single unit for the purposes of this section.

Sessions of the Federal Parliament, prorogation and dissolution.
[Cf. Government of India Act, 1935, s. 19.]

61. (1) The Houses of the Federal Parliament shall be summoned to meet once at least in every year, and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this section, the President may from time to time :

(a) summon the Houses or either House to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People.

(3) The Houses shall be summoned to meet for their first session as early as possible after the commencement of this Constitution.

Right of President to address and send messages to Houses.
[Cf. Government of India Act, 1935, s. 20.]

62. (1) The President may address either House of the Federal Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of the Federal Parliament, whether with respect to a Bill then pending in the Federal Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Rights of Ministers and Advocate-General as respects Houses.

63. Every Minister and the Advocate-General of the Federation shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any committee of the Federal

Parliament of which he may be named a member, but shall not by virtue of this section be entitled to vote.

64. (1) The Vice-President of the Federation shall be *ex-officio* Chairman of the Council of States:

Provided that during any period when the Vice-President discharges the functions of the President under section 51, he shall not perform the duties of the office of the Chairman of the Council of States and the said office shall during such period be deemed to be vacant.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant, the Council shall choose another member to be Deputy Chairman thereof.

(3) A member holding office as Deputy Chairman of the Council of States shall vacate his office if he ceases to be a member of the Council, may at any time resign his office by writing under his hand addressed to the Chairman and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council; but no resolution for the purpose of this subsection shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(4) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman, or if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose, and during any absence of the Chairman from any sitting of the Council, the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council shall act as Chairman.

(5) There shall be paid to the Chairman and the Deputy Chairman of the Council of States such salaries as may be respectively fixed by Act of the Federal Parliament, and until provision in that behalf is so made, such salaries as the President may determine.

(6) The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

[*Cf. Government of India Act, 1935, s. 21.*]
[*Officers of Houses.*]

[*Cf. Government of India Act, 1935, s. 22; U.S.A. Constitution (1787), Art. I, s. 3(4).*]

(7) A member holding office as Speaker or Deputy Speaker of the House of the People shall vacate his office if he ceases to be a member of the House of the People, may at any time resign his office by writing under his hand addressed, in the case where such member is the Speaker, to the Deputy Speaker and in the case where such member is the Deputy Speaker, to the Speaker, and may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House; but no resolution for the purpose of this section shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

(8) The provisions of sub-sections (4) and (5) of this section shall apply in relation to the House of the People as they apply in relation to the Council of States with the substitution of the titles "Speaker" and "Deputy Speaker" for the titles "Chairman" and "Deputy Chairman" respectively, and with the substitution of references to the "House of the People" for references to the "Council of States".

*Voting in
Houses, power
of Houses to act
notwithstanding
vacancies
and quorum.
[Cf. Govern-
ment of India
Act, 1935, s. 23.]*

65. (1) Save as provided in the last preceding section, all questions at any sitting or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Chairman or Speaker or person acting as such.

The Chairman or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Federal Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Federal Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a House, less than one-sixth of the total number of members of the House are present, it shall be the duty of the Chairman or Speaker or person acting as such either to adjourn the House, or to suspend the meeting until at least one-sixth of the members are present.

Provisions as to Members of the Federal Parliament

66. Every member of either House of the Federal Parliament shall, before taking his seat, make and subscribe before the President or some person appointed by him, a declaration according to the form set out in that behalf in the Third Schedule to this Constitution.

*Declaration
by Members.*
[Cf. Govern-
ment of India
Act, 1935, s. 24.]

67. (1) No person shall be a member of both Houses of the Federal Parliament and rules made by the President shall provide for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

*Vacation of
Seats.*
[Cf. Govern-
ment of India
Act, 1935, s. 25.]

(2) If a member of either House of the Federal Parliament—

(a) becomes subject to any of the disqualifications mentioned in sub-section (1) of the next succeeding section; or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant.

(3) If for a period of sixty days a member of either House of the Federal Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

68. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of the Federal Parliament—

*Disqualifica-
tions for
membership.*
[Cf. Govern-
ment of India
Act, 1935, s. 26.]

(a) if he holds any office of profit under the Federation or any unit other than an office declared by Act of the Federal Parliament not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if, whether before or after the commencement of this Constitution, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been specified in the Fourth Schedule to this Constitution or has been declared by Act of the Federal Parliament to be an offence

or practice entailing disqualification for membership of the Federal Parliament, unless the period specified in that behalf in that Schedule or by or under the provisions of that Act has elapsed;

- (e) if, whether before or after the commencement of this Constitution, he has been convicted of any other offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such shorter period as the President may allow in any particular case, has elapsed since his release;
- (f) if, having been nominated as a candidate for the Federal Parliament or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by or under the provisions of the Fourth Schedule to this Constitution or any law for the time being in force unless five years have elapsed from the date by which the return ought to have been lodged or the President has removed the disqualification :

Provided that a disqualification under clause (f) of this sub-section shall not take effect until the expiration of two months from the date by which the return ought to have been lodged or of such longer period as the President may in any particular case allow.

(2) A person shall not be capable of being chosen a member of either House of the Federal Parliament while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) When a person who, by virtue of a conviction or a conviction and a sentence becomes disqualified by virtue of clause (d) or clause (e) of sub-section (1) of this section is at the date of the disqualification a member of the Federal Parliament, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section, he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Federation or any unit by reason only that he is a Minister either for the Federation or for a Province.

69. If a person sits or votes as a member of either House of the Federal Parliament before he has complied with the requirements of section 66, or when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

Penalty for sitting and voting before declaration under Section 66 or when not qualified or when disqualified.
[Cf. Government of India Act, 1935, s. 27.]

70. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Federal Parliament, there shall be freedom of speech in the Federal Parliament, and no member of the Federal Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Federal Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of the Federal Parliament of any report, paper, votes or proceedings.

Privileges etc., of members.
[Cf. Government of India Act, 1935, s. 28.]

(2) In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Act of the Federal Parliament, and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

[Cf. Commonwealth of Australia Constitution Act, Ch. I, s. 49.]

(3) The provisions of sub-sections (1) and (2) of this section shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of the Federal Parliament as they apply in relation to members of the Federal Parliament.

71. Members of either House of the Federal Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Federal Parliament and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the Legislature of the Dominion of India,

Salaries and allowances of members.
[Cf. Government of India Act, 1935, s. 29.]

Legislative Procedure

Provisions as to introduction and passing of Bills.

[Cf. Government of India Act, 1935, s. 30.]

72. (1) Subject to the special provisions of this Part of this Constitution with respect to Money Bills, a Bill may originate in either House of the Federal Parliament.

(2) Subject to the provisions of sections 73 and 74, a Bill shall not be deemed to have been passed by the Houses of the Federal Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Federal Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People or which having been passed by the House of the People is pending in the Council of States shall, subject to the provisions of section 73, lapse on a dissolution of the House of the People.

Joint sitting of both Houses in certain cases.

[Cf. Government of India Act, 1935, s. 31.]

73. (1) If after a Bill has been passed by one House and transmitted to the other House—

- (a) the Bill is rejected by the other House ; or
- (b) the Houses have finally disagreed as to the amendments to be made in the Bill; or
- (c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being presented to the President for his assent,

the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this sub-section shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in sub-section (1), no account shall be taken of any time during which the Federal Parliament is prorogued or during which both Houses are adjourned for more than four days.

(3) Where the President has under sub-section (1) notified his intention of summoning the Houses to meet in a

joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

- (a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill ;
- (b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

(5) A joint sitting may be held under this section and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

74. (1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the

Special procedure in respect of Money Bills.
[Cf. Irish Constitution, Art. 21.]

amendments recommended by the Council of States and accepted by the House of the People, and if the House of the People does not accept any of the recommendations of the Council of States, it shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(4) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period of thirty days in the form in which it was passed by the House of the People.

Definition of "Money Bills".
[Cf. Government of India Act, 1935, s. 37; Commonwealth of Australia Constitution Act, Ch. I, s. 53 and Irish Constitution, Arts. 22(1) 1° and 2°.]

75. (1) For the purposes of this chapter, a Bill shall be deemed to be a Money Bill if it makes provision—

- (a) for imposing or increasing any tax; or
- (b) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government; or
- (c) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition or increase of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

76. When a Bill has been passed by the Houses of the Federal Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments

Assent to Bills.
[Cf. Government of India Act, 1935, s. 32.]

as he may recommend in his message, and the Houses shall reconsider the Bill accordingly.

Procedure in Financial Matters

77. (1) The President shall in respect of every financial year cause to be laid before both the Houses of the Federal Parliament a statement of the estimated receipts and expenditure of the Federation for that year, in this Part of this Constitution referred to as the "annual financial statement".

Annual financial Statement.
[Cf. Government of India Act, 1935, s. 33.]

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of the Federation; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of the Federation,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of the Federation—

- (a) the emoluments and allowances of the President and other expenditure relating to his office;
- (b) debt charges for which the Federation is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (c) the salaries, allowances and pensions payable to or in respect of judges of the Supreme Court and the pensions payable to or in respect of judges of the Federal Court or of any High Court which immediately before the commencement of this Constitution exercised jurisdiction within the territories of the Provinces of the Federation;
- (d) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (e) any other expenditure declared by this Constitution or any Act of the Federal Parliament to be so charged.

78. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Federal Parliament, but nothing in this sub-section shall be

Procedure in Parliament with respect to estimates.

[Cf. Government of India Act, 1935, s. 34.]

Authentication of schedule of authorised expenditure.
[Cf. Government of India Act, 1935, s. 35.]

Supplementary statements of expenditure.
[Cf. Government of India Act, 1935, s. 36.]

Special Provisions as to financial Bills.
[Cf. Government of India Act, 1935, s. 37.]

construed as preventing the discussion in either House of the Federal Parliament of any of these estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People and the House of the People shall have power to assent, or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

79. (1) The President shall authenticate by his signature a schedule specifying—

(a) the grants made by the House of the People under the last preceding section;

(b) the several sums required to meet the expenditure charged on the revenues of the Federation, but not exceeding in the case of any sum, the sum shown in the statement previously laid before the Federal Parliament.

(2) The schedule so authenticated shall be laid before the House of the People, but shall not be open to discussion or vote in the Federal Parliament.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Federation shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

80. If in respect of any financial year further expenditure from the revenues of the Federation becomes necessary over and above the expenditure theretofore authorised for that year, the President shall cause to be laid before both the Houses of the Federal Parliament a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

81. (1) A Money Bill or an amendment thereto shall not be introduced or moved except on the recommendation of the President.

(2) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of the Federation shall not be passed by either House of the Federal Parliament unless the President has recommended to that House the consideration of the Bill.

Procedure Generally

82. (1) Each House of the Federal Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

Rules of procedure.
[Cf. Government of India Act, 1935, s. 38.]

(2) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(3) Until rules are made under this section, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to the Federal Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(4) At a joint sitting of the two Houses the Chairman of the Council of States, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

83. (1) *In the Federal Parliament business shall be transacted in Hindustani (Hindi or Urdu) or in the English language :*

Language to be used in the Federal Parliament.
[Cf. Constituent Assembly Rules, rule 29.]

Provided that the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue.

(2) *The Chairman of the Council of States or the Speaker of the House of the People shall, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People, as the case may be, a summary of the speech delivered by a member in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House in which such speech has been delivered.*

84. (1) No discussion shall take place in the Federal Parliament with respect to the conduct of any judge of the Supreme Court or a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge as hereinafter provided.

Restrictions on discussion in the Parliament.
[Cf. Government of India Act, 1935, s. 40.]

(2) In this section the reference to a High Court shall

Courts not to inquire into proceedings of the Parliament.
[Cf. Government of India Act, 1935, s. 41.]

Power of President to promulgate Ordinances during recess of Parliament.
[Cf. Government of India Act, 1935, s. 42.]

be construed as including a reference to any court in a Federated State which is a High Court for any of the purposes of Chapter IV of Part IV of this Constitution.

85. (1) The validity of any proceedings in the Federal Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Federal Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Chapter III—Legislative Powers of the President

86. (1) If at any time when the Federal Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this section shall have the same force and effect as an Act of the Federal Parliament assented to by the President, but every such Ordinance—

(a) shall be laid before the Federal Parliament and shall cease to operate at the expiration of six weeks from the reassembly of the Federal Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an Ordinance under this section makes any provision which the Federal Parliament would not under this Constitution be competent to enact, it shall be void.

Chapter IV—The Federal Judicature

87. (1) There shall be a Supreme Court in the Federation consisting of a Chief Justice and such number of other judges not being less than ten as the Federal Parliament may by Act prescribe.

(2) Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the Provinces as may be necessary for the purpose and shall hold office until he attains

Establishment and constitution of Supreme Court.
[Cf. Government of India Act, 1935, s. 200.]

the age of sixty-five years:

Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of the Supreme Court shall always be consulted:

Provided further that—

- (a) a judge may by resignation under his hand addressed to the President resign his office;
- (b) a judge may be removed from his office by the President in the manner provided in sub-section (4).
- (3) A person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of the Federation and—

- (a) has been for at least five years a judge of a High Court or of two or more such courts in succession; or
- (b) is a barrister of England or Northern Ireland of at least ten years' standing or a member of the Faculty of Advocates in Scotland of at least ten years' standing; or
- (c) has been for at least ten years a pleader of a High Court or of two or more such courts in succession.

Explanation I: In this sub-section 'High Court' means a High Court which exercises, or which before the commencement of this Constitution exercised, jurisdiction in any territory included in the Federation.

Explanation II: In computing for the purpose of this sub-section the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, shall be included.

(4) A judge of the Supreme Court shall not be removed from his office except by an order of the President passed on an address being presented in accordance with the procedure prescribed in this behalf by an Act of the Federal Parliament to the President by both Houses of the Federal Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Every person appointed to be a judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President or some person appointed by him a declaration according to the form set out in that behalf in the Third Schedule to this Constitution.

*Salaries etc.
of judges.
[Cf. Govern-
ment of India
Act, 1935,
s. 201.]*

88. The judges of the Supreme Court shall be entitled to such salaries and allowances including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pension, as may from time to time be fixed by or under Act of the Federal Parliament, and until they are so fixed shall be entitled to such salaries, allowances and rights in respect of leave of absence or pension as are specified in the Second Schedule to this Constitution:

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

*Temporary
appointment
of acting Chief
Justice.
[Cf. Govern-
ment of India
Act, 1935,
s. 202 (1).]*

89. If the office of Chief Justice of the Supreme Court becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by the President to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the President may appoint for the purpose.

*Appointment of
ad hoc judges.
[Cf. Canadian
Supreme Court
Act, s. 30.]*

90. (1) If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the court, owing to a vacancy or vacancies, or to the absence through illness or on leave or in the discharge of other duties assigned by statute or otherwise, or to the disqualification of a judge or judges, or if by reason of any temporary increase in the business of the Supreme Court the strength of the judges of the court should for the time being be increased, the Chief Justice, or, in his absence the senior puisne judge, may in writing request the attendance at the sittings of the court, as an *ad hoc* judge, for such period as may be necessary, of a judge of a High Court to be designated in writing by the Chief Justice or in his absence by any acting Chief Justice or the senior puisne judge of such High Court upon such request being made to him in writing.

(2) It shall be the duty of the judge, who has been so designated, in priority to other duties of his office to attend the sittings of the Supreme Court at the time and for the period for which his attendance shall be required, and while so attending he shall possess the powers and privileges and shall discharge the duties of a puisne judge of the Supreme Court.

91. *The Supreme Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice may, with the approval of the President, from time to time, appoint.*

Seat of Supreme Court.
[Cf. Government of India Act, 1935, s. 203.]

92. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have an original jurisdiction in any dispute between any two or more of the following parties, that is to say, the Federation and the units, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Original jurisdiction of the Supreme Court.
[Cf. Government of India Act, 1935, s. 204.]

Provided that the said jurisdiction shall not extend to a dispute to which an Indian State is a party if the dispute arises out of any provision of a treaty, agreement, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution or which expressly provides that the said jurisdiction shall not extend to such a dispute.

93. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court of a Province, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution and it shall be the duty of every such High Court to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

Appellate jurisdiction of Supreme Court in appeals from High Courts in Provinces in certain cases.
[Cf. Government of India Act, 1935, s. 205.]

(2) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided and, with the leave of the Supreme Court, on any other ground as well.

94. Subject to such rules as the Supreme Court may make in this behalf, an appeal shall lie to the Supreme Court from a judgment, decree or final order of a High Court in a Province without any such certificate as aforesaid, if

Appellate jurisdiction of Supreme Court in appeals from High Courts in Provinces in other cases.
[Cf. Government of India Act, 1935, s. 206.]

- (a) the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than *twenty thousand* rupees, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and where the judgment, decree or final order appealed from affirms the decision of the court

immediately below, the appeal involves some substantial question of law; or

(b) the Supreme Court gives special leave to appeal.

Appellate jurisdiction of Supreme Court in appeals from High Courts in Federated States.

[Cf. Government of India Act, 1935, s. 207.]

95. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a Federated State if the case involves a substantial question of law as to the interpretation of this Constitution or of any law of the Federal Parliament, or of the Legislature of any unit other than the State concerned.

(2) An appeal under this section shall be by way of special case to be stated for the opinion of the Supreme Court by the High Court, and the Supreme Court may require a case to be so stated, and may return any case so stated in order that further facts may be stated therein.

Enlargement of the jurisdiction of the Supreme Court.

96. (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Federal Legislative List as the Federal Parliament may by Act confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Federation and any unit may by special agreement confer, if the Federal Parliament by Act provides for the exercise of such jurisdiction and powers by the Supreme Court.

Power of the Supreme Court to issue certain writs for the enforcement of rights guaranteed in Part III.

97. Without prejudice to the powers that may for the time being be vested in this behalf in other courts, the Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto*, and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights guaranteed in Chapter II of Part III of this Constitution.

Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.
[Cf. Government of India Act, 1935, s. 210.]

98. (1) All authorities, civil and judicial, in the territories of the Federation shall act in aid of the Supreme Court.

(2) The Supreme Court shall, as respects the said territories, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court, which any High Court in the Provinces has power to make as respects the territory within its jurisdiction, and any such orders, and any orders of the Supreme Court as to the costs of and incidental to any proceedings therein, shall be enforceable by all courts and authorities in every part of the territories

of the Federation as if they were orders duly made by the highest court exercising civil or criminal jurisdiction, as the case may be, in that part.

99. Where in any case the Supreme Court requires a Special case to be stated or restated by, or remits a case to, or orders a stay of execution in a case from, a High Court in a Federated State or requires the aid of the civil or judicial authorities in a Federated State, the Supreme Court shall cause letters of request in that behalf to be sent to the Ruler of the State, and the Ruler shall cause such communication to be made to the High Court or to any judicial or civil authority as the circumstances may require.

100. The law declared by the Supreme Court shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts within the territories of the Federation.

101. (1) If at any time it appears to the President that a question of law has arisen, or is likely to arise, which is of such a nature and such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that court for consideration, and the court may, after such hearing as it thinks fit, report to the President thereon.

(2) No report shall be made under this section save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

102. (1) The Supreme Court may from time to time, with the approval of the President, make rules of court for regulating generally the practice and procedure of the court, including rules as to the persons practising before the court, as to the time within which appeals to the court are to be entered, as to the costs of and incidental to any proceedings in the court, and as to the fees to be charged in respect of proceedings therein, and in particular may make rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

Letters of request to Federated States.

[Cf. Government of India Act, 1935, s. 211.]

Law declared by Supreme Court to be binding on all courts.

[Cf. Government of India Act, 1935, s. 212.]

Power of President to consult Supreme Court.

[Cf. Government of India Act, 1935, s. 213.]

Rules of court, etc.

[Cf. Government of India Act, 1935, s. 214.]

(2) Rules made under this section may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges :

Provided that all references under section 101 shall be heard by the full court.

(3) Subject to the provisions of any rules of court, the Chief Justice shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose.

(4) No judgment shall be delivered by the Supreme Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this sub-section shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

Ancillary powers of Supreme Court.
[Cf. Government of India Act, 1935, s. 215.]

103. The Federal Parliament may make provision by Act for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

Expenses of the Supreme Court.
[Cf. Government of India Act, 1935, s. 216(1).]

104. The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of the Federation, and any fees or other moneys taken by the court shall form part of those revenues.

Construction of references to High Courts in Indian States.
[Cf. Government of India Act, 1935, s. 217.]

105. References in any provision of this chapter of this Constitution to a High Court in, or exercising jurisdiction in, a Federated State shall be construed as references to any court which the President may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision.

Chapter V—Auditor-General of the Federation

Auditor-General.
[Cf. Government of India Act, 1935, s. 166 (1), (2) and (4).]

106. (1) There shall be an Auditor-General of the Federation, who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court.

(2) *The salary, allowances and other conditions of service of the Auditor-General shall be such as may be determined by Act of the Federal Parliament and until they are so determined shall be as specified in the Second Schedule*

to this Constitution :

Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) *The Auditor-General shall not be eligible for further office either under the Federation or under the Government of any unit after he has ceased to hold his office.*

(4) *The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.*

107. The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as are or may be prescribed by or under any Federal law.

Explanation : In this section the expression "Federal law" includes any existing law for the time being in force in the territories of the Federation.

108. The accounts of the Federation shall be kept in such form as the Auditor-General of the Federation may, with the approval of the President, prescribe and, in so far as the Auditor-General of the Federation may, with the like approval, give any directions with regard to the methods or principles in accordance with which any accounts of Provinces ought to be kept, it shall be the duty of every Provincial Government to cause accounts to be kept accordingly.

109. The reports of the Auditor-General of the Federation relating to the accounts of the Federation shall be submitted to the President, who shall cause them to be laid before the Federal Parliament.

Duties and powers of the Auditor-General.
[Cf. Government of India Act, 1935, s. 166(3).]

Power of the Auditor-General of the Federation to give directions as to accounts.
[Cf. Government of India Act, 1935, s. 168.]

Audit reports.
[Cf. Government of India Act, 1935, s. 169.]

PART V—THE GOVERNORS' PROVINCES

Chapter I—The Provinces

110. (1) The following shall be Governors' Provinces, that is to say, Madras, Bombay, West Bengal, the United Provinces, East Punjab, Bihar, the Central Provinces and Berar, Assam, Orissa and such other Governors' Provinces as may be created under this Constitution.

(2) In this Constitution, unless the context otherwise requires, the expression "Province" means a "Governor's Province" and "Provincial" shall be construed accordingly.

Governors' Provinces.
[Cf. Government of India Act, 1935, s. 46.]

*Chapter II—The Provincial Executive**The Governor**Governors of Provinces.*

111. In each Province there shall be a Governor who shall be elected in the manner provided in the next succeeding section.

Election of Governor.

112. The Governor of a Province shall be elected by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the Province.

Term of office of Governor.

113. The Governor shall hold office for a term of four years from the date on which he enters upon his office :

Provided that—

- (a) a Governor may by resignation under his hand addressed to the Speaker of the Legislative Assembly of the Province resign his office;
- (b) a Governor may be removed from office for stated misbehaviour by impeachment in the manner provided in section 118;
- (c) a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Eligibility for re-election as Governor.
[Cf. Irish Constitution, Art. 12(3)2°.]
Qualifications for election as Governor.
[Cf. Irish Constitution, Art. 12(4)1°.]

114. A person who holds, or who has held, office as Governor shall be eligible for re-election to that office once, but only once.

115. (1) No person shall be eligible for election as Governor of a Province unless he—

- (a) is a citizen of the Federation,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the Legislative Assembly of the Province.

(2) A person shall not be eligible for election as a Governor if he holds any office or position of emolument under the Federal Government or a Provincial Government or under any local or other authority subject to the control of either Government.

Conditions of Governor's office.
[Cf. Irish Constitution, Arts. 12(6) and 12(11).]

116. (1) The Governor shall not be a member either of the Federal Parliament or of the Provincial Legislature and if a member of the Federal Parliament or of the Provincial Legislature be elected Governor, he shall be deemed to have vacated his seat in the Federal Parliament or the Provincial Legislature, as the case may be, on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence and there shall be paid to the Governor such emoluments and allowances as may be determined by Act of the Provincial Legislature and until provision in that behalf is so made, the Governor shall receive such emoluments and allowances as are specified in the Second Schedule to this Constitution.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

117. Every Governor and every person acting as Governor shall enter upon his office after making and subscribing in the presence of the members of the Provincial Legislature a declaration according to the form set out in that behalf in the Third Schedule to this Constitution.

Declaration by the Governor before entering office.

[Cf. Irish Constitution, Art. 12(8).]

118. (1) When a Governor is to be impeached for stated misbehaviour, the charge shall be preferred by the Legislative Assembly of the Province, but no proposal to prefer such charge shall be entertained by the Assembly except upon a notice of motion in writing signed by not less than thirty members of the Assembly and no such proposal shall be adopted by the Assembly except upon a resolution of the Assembly supported by not less than two-thirds of the total membership of the Assembly.

Procedure for impeachment of the Governor.

[Cf. Irish Constitution, Art. 12(10).]

(2) When a charge has been so preferred the Speaker of the Assembly shall inform the Chairman of the Council of States. Thereupon the Council of States shall appoint a committee, which may consist of, or include, persons who are not members of the Council, to investigate the charge and the Governor shall have the right to appear and to be represented at such investigation.

(3) If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the Council of States declaring that the charge preferred against the Governor has been sustained and that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office, such resolution shall have the effect of removing the Governor from his office as from the date on which the resolution is communicated to the Speaker of the Assembly.

119. (1) For each Province there shall be a Deputy Governor who shall be elected by the members of the Legislative Assembly of the Province, or where there is a Legislative Council in the Province, by the members of the

Deputy Governor.

Legislative Assembly and the Legislative Council of the Province assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) If the Governor dies, resigns his office, or is removed from his office or is unable to perform his duties owing to absence, illness or any other cause, the Deputy Governor shall act as Governor for the unexpired remainder of the term for which the Governor would otherwise have continued in office or until the Governor resumes his duties, as the case may be.

(3) The Deputy Governor shall hold office for a term of four years from the date on which he enters upon his office: Provided that—

(a) a Deputy Governor may, by resignation under his hand addressed to the Governor of the Province, resign his office;

(b) a Deputy Governor may be removed from office for stated misbehaviour by impeachment in the manner provided in section 118 for the removal of the Governor from office;

(c) a Deputy Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(4) No person shall be eligible for election as Deputy Governor of a Province unless he—

(a) is a citizen of the Federation,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the Legislative Assembly of the Province.

(5) A person shall not be eligible for election as a Deputy Governor if he holds any office or position of emolument under the Federal Government or a Provincial Government or under any local or other authority subject to the control of either Government.

(6) The Deputy Governor shall not be a member either of the Federal Parliament or of the Provincial Legislature and if a member of the Federal Parliament or of the Provincial Legislature be elected Deputy Governor, he shall be deemed to have vacated his seat in the Federal Parliament or the Provincial Legislature, as the case may be, on the date on which he enters upon his office as Deputy Governor.

(7) The Deputy Governor shall not, while acting as Governor, hold any other office or position of emolument.

(8) There shall be paid to the Deputy Governor such emoluments and allowances as may be determined by Act of the Provincial Legislature and until provision in that behalf is so made, the Deputy Governor shall receive such emoluments and allowances as are specified in the Second Schedule to this Constitution.

(9) The emoluments and allowances of the Deputy Governor shall not be diminished during his term of office.

120. The Provincial Legislature may make such provision as it thinks fit for the discharge of the functions of the Governor or the Deputy Governor in any contingency not provided for in this chapter.

Power of the Provincial Legislature to provide for the discharge of the functions of the Governor or the Deputy Governor in any other contingency.
[Cf. U.S.A. Constitution, (1787), Art. II, s. 1(6).]

121. An election to fill the vacancy occurring at the end of the term of office of a Governor or a Deputy Governor shall be held before the date of expiration of the term.

Time of holding elections for the offices of the Governor and Deputy Governor.

122. (1) All doubts and disputes arising out of or in connection with the election of a Governor or Deputy Governor shall be inquired into and decided by the Supreme Court of the Federation whose decision thereon shall be final.

Matters relating to or connected with the election of Governor or a Deputy Governor.

(2) Subject to the provisions of this Constitution, Acts of the Provincial Legislature may regulate any matter relating to or connected with the election of a Governor or a Deputy Governor.

[Cf. Irish Constitution, Art. 12(5).]

123. (1) The executive authority of the Province shall be vested in the Governor and may be exercised by him either directly or through persons acting under his authority.

Executive authority of Province.
[Cf. Government of India Act, 1935, s. 49 (1).]

(2) Without prejudice to the generality of the foregoing provision, the power to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter with respect to which the Provincial Legislature has power to make laws shall be vested in the Governor.

(3) Nothing in this section shall prevent the Federal Parliament or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing law on any court, officer or local or other authority.

Extent of the executive authority of Province.

[Cf. Government of India Act, 1935, s. 49(2).]

124. Subject to the provisions of this Constitution, the executive authority of each Province shall extend—

- (a) to the matters with respect to which the Legislature of the Province has power to make laws, and
- (b) to the exercise of such rights, authority, and jurisdiction as are exercisable under any agreement entered into with any Indian State or group of Indian States under section 189.

Administration of Provincial Affairs

Council of Ministers.

[Cf. Government of India Act, 1935, s. 50.]

125. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

Other provisions as to Ministers.

[Cf. Government of India Act, 1935, ss. 51 & 53.]

126. (1) The Governor's Ministers shall be chosen and summoned by him and shall hold office during his pleasure.

(2) The Ministers shall before entering upon their offices make a declaration in the presence of the Governor according to the form set out in that behalf in the Third Schedule to this Constitution.

(3) A Minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a Minister.

(4) In choosing his Ministers and in his relations with them, the Governor shall be generally guided by the instructions set out in the Fifth Schedule to this Constitution, but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.

(5) The salaries of Ministers shall be such as the Provincial Legislature may from time to time by Act determine.

and, until the Provincial Legislature so determine, shall be determined by the Governor:

Provided that the salary of a Minister shall not be varied during his term of office.

(6) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

(7) The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of Ministers and with respect to the determination of their salaries shall be exercised by him in his discretion.

127. (1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a judge of a High Court, to be Advocate-General for the Province.

Advocate-General for Province.
[Cf. Government of India Act, 1935, s. 55.]

(2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters and to perform such other duties of a legal character as may, from time to time, be referred or assigned to him by the Governor and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall retire from office upon the resignation of the Prime Minister in the Province, but he may continue in office until his successor is appointed or he is re-appointed.

[Cf. Irish Constitution, Art. 30(5)4°.]

(4) The Advocate-General shall receive such remuneration as the Governor may determine.

128. (1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

Conduct of business of Provincial Government.
[Cf. Government of India Act, 1935, s. 59.]

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) (a) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion:

Provided that in the Provinces of Bihar, Central Provinces

and Berar and Orissa, there shall be a Minister in charge of tribal welfare who may, in addition, be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(b) For the avoidance of doubt it is hereby declared that the allocation of business among Ministers may, where the Province contains distinct regions, be on a regional basis.

Chapter III—The Provincial Legislature General

*Constitution
of Provincial
Legislatures.
[Cf. Govern-
ment of India
Act, 1935, s. 60.]*

129. (1) There shall for every Province be a Provincial Legislature which shall consist of the Governor; and

(a) in the Provinces of.....
....., two Houses,

(b) in other Provinces, one House.

(2) Where there are two Houses of a Provincial Legislature, one shall be known as the Legislative Council and the other as the Legislative Assembly and where there is only one House, it shall be known as the Legislative Assembly.

*Composition of
the Provincial
Legislative
Assemblies.*

130. (1) The Legislative Assembly of each Province shall be composed of members chosen by direct election.

(2) The election shall be on the basis of adult suffrage, that is to say, every person who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or any Act of the Provincial Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt practice shall be entitled to be registered as a voter at such elections.

(3) Seats shall be reserved for—

(a) the Muslim community, the Scheduled Castes and the Scheduled Tribes (except the Scheduled Tribes in the autonomous districts of Assam) in the Legislative Assembly of every Province;

(b) the Indian Christian community in the Legislative Assemblies of the Provinces of Madras and Bombay; and

(c) the autonomous districts in the Legislative Assembly of the Province of Assam;
according to the scale prescribed in sub-section (6).

(4) (a) The number of seats reserved for any community in the Legislative Assembly of any Province shall bear, as nearly as may be, the same proportion to the

total number of seats in that Assembly as the population of the community in the Province bears to the total population of the Province.

Explanation: All the Scheduled Castes in a Province shall be deemed to be a single community for the purposes of this clause and so also all the Scheduled Tribes in a Province.

(b) The number of seats reserved for an autonomous district in the Legislative Assembly of the Province of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the Province.

(5) Notwithstanding anything contained in this section the Governor of a Province may, if he is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly of the Province, nominate such number of members of the community to the Legislative Assembly as he considers appropriate.

(6) The representation of each territorial constituency in the Legislative Assembly of a Province shall be on the basis of the population of that constituency as ascertained at the last preceding census and shall be on a scale of not more than one representative for every lakh of the population:

Provided that the total number of members in the Legislative Assembly of a Province shall in no case be more than three hundred or less than sixty.

(6A) Upon the completion of each decennial census, the representation of the several territorial constituencies in the Legislative Assembly of each Province shall be readjusted by such authority, in such manner, and with effect from such date as the Provincial Legislature may by Act determine:

Provided that such readjustment shall not affect representation to the Legislative Assembly until the dissolution of the then existing Assembly.

(7) The constituencies for the seats reserved for any autonomous district of the Province of Assam shall not comprise any area outside that district.

(8) No person who is not a member of a Scheduled Tribe in any autonomous district of the Province of Assam shall be eligible for election to the Legislative Assembly of the Province from any constituency of that district except from

the constituency comprising the cantonment and municipality of Shillong.

[Cf. Government of India Act, 1935, s. 61(2).]

Composition of the Provincial Legislative Councils.

(9) Every Legislative Assembly of every Province, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and the expiration of the said period of four years shall operate as a dissolution of the Assembly.

131. (1) The total number of members in the Legislative Council of a Province having such a Council shall not exceed twenty-five *per centum* of the total number of members in the Legislative Assembly of that Province.

(2) Of the total number of members in the Legislative Council of a Province—

(a) one-half shall be chosen from panels of candidates constituted under sub-section (3);

(b) one-third shall be elected by the members of the Legislative Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote; and

(c) the remainder shall be nominated by the Governor.

[Cf. Irish Constitution, Arts. 18(4) & 18(7).]

(3) Before the first general election and, thereafter, before each triennial election under sub-section (6), to the Legislative Council of a Province, six panels of candidates shall be formed, of which one shall contain the names of representatives of Universities in the Province and the remaining five shall respectively contain the names of persons having knowledge or practical experience of the following interests and services, namely :

(a) national language and culture, literature, art, education and such professional interests as may be defined by Act of the Provincial Legislature;

(b) agriculture and allied interests;

(c) labour;

(d) industry and commerce including banking, finance, accountancy, engineering and architecture;

(e) public administration and social services.

(4) Each panel of candidates constituted under sub-section (3) shall contain at least twice the number to be elected from such panel.

(5) For bye-elections, sub-sections (3) and (4) shall have effect subject to such adaptations and modifications as may be prescribed by Act of the Provincial Legislature.

[Cf. Government of India

(6) Every Legislative Council shall be a permanent body not subject to dissolution but, as near as may be,

one-third of the members thereof shall retire in every third year in accordance with the provision in that behalf made in relation to the Province under the Sixth Schedule to this Constitution.

132. A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he is in the case of a seat in a Legislative Assembly not less than twenty-five years of age and in the case of a seat in a Legislative Council not less than thirty-five years of age.

Act, 1935, s. 61 (3).]

Age limit for membership of the Provincial Legislature.
[Cf. Government of India Act, 1935, Fifth Schedule, para. 1(b).]

133. Until other provision is made under section 158, all matters relating to or connected with elections to either House of the Provincial Legislature shall be regulated by the relevant provisions of the Sixth Schedule to this Constitution.

Elections to the Provincial Legislature.

134. (1) The House or Houses of each Provincial Legislature shall be summoned to meet once at least in every year and twelve months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

Sessions of the Provincial Legislature, prorogation and dissolution.
[Cf. Government of India Act, 1935, s. 62.]

(2) Subject to the provisions of this section, the Governor may, from time to time—

(a) summon the Houses or either House to meet at such time and place as he thinks fit;

(b) prorogue the House or Houses;

(c) dissolve the Legislative Assembly.

(3) The House or Houses shall be summoned to meet for the first session of the Legislature as early as possible after the commencement of this Constitution.

(4) The functions of the Governor under clauses (a) and (c) of sub-section (2) shall be exercised by him in his discretion.

135. (1) The Governor may address the Legislative Assembly or in the case of a Province having a Legislative Council, either House of the Provincial Legislature, or both Houses assembled together and may for that purpose require the attendance of members.

Right of Governor to address and send messages to the Houses.
[Cf. Government of India Act, 1935, s. 63.]

(2) The Governor may send messages to the House or Houses of the Provincial Legislature, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

*Rights of
Ministers and
Advocate-
General as
respects the
Houses.*
[Cf. Govern-
ment of India
Act, 1935, s. 64.]

*Officers of
the Houses.*
[Cf. Govern-
ment of India
Act, 1935, s. 65.]

136. Every Minister and the Advocate-General of a Province shall have the right to speak in, and otherwise take part in the proceedings of, the Legislative Assembly of the Province or, in the case of a Province having a Legislative Council, both Houses and any joint sitting of the Houses, and to speak in, and otherwise take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this section, be entitled to vote.

137. (1) Every Provincial Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

(2) A member holding office as Speaker or Deputy Speaker of an Assembly shall vacate his office if he ceases to be a member of the Assembly, may at any time resign his office by writing under his hand addressed in the case where such member is the Speaker, to the Deputy Speaker or in the case where such member is the Deputy Speaker, to the Speaker, and may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly, but no resolution for the purpose of this sub-section shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose, and during any absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

(4) There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly such salaries as may be respectively fixed by Act of the Provincial Legislature

and, until provision in that behalf is so made, such salaries as the Governor may determine.

(5) In the case of a Province having a Legislative Council, the foregoing provisions of this section [other than the proviso to sub-section (2) thereof] shall apply in relation to the Legislative Council as they apply in relation to the Legislative Assembly, with the substitution of the titles "Chairman" and "Deputy Chairman" for the titles "Speaker" and "Deputy Speaker" respectively, and with the substitution of references to the Council for references to the Assembly.

138. (1) Save as in this Constitution otherwise expressly provided, all questions in a House, or a joint sitting of two Houses, of a Provincial Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

(2) The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(3) A House of a Provincial Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in a Provincial Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(4) If at any time during a meeting of a Provincial Legislative Assembly or a Provincial Legislative Council there is no quorum, it shall be the duty of the Speaker or Chairman or person acting as such either to adjourn the House or to suspend the meeting until there is a quorum.

The quorum shall be ten members or one-sixth of the total number of members of the House, whichever is greater.

Provisions as to Members of Legislatures

139. Every member of a Provincial Legislative Assembly or Legislative Council shall, before taking his seat, make and subscribe before the Governor, or some person appointed by him, a declaration according to the form set out in that behalf in the Third Schedule to this Constitution.

140. (1) No person shall be a member of both Houses of a Provincial Legislature and rules made by the Governor shall provide for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

Voting in Houses, power of Houses to act notwithstanding vacancies and quorum.
[Cf. Government of India Act, 1935, s. 66.]

Declaration by members.
[Cf. Government of India Act, 1935, s. 67.]

Vacation of seats.
[Cf. Government of India Act, 1935, s. 68.]

(2) No person shall be a member both of the Federal Parliament and of a Provincial Legislature and if a person is chosen a member both of the Federal Parliament and of a Provincial Legislature, then, at the expiration of such period as may be specified in rules made by the Governor of the Province, that person's seat in the Provincial Legislature shall become vacant, unless he has previously resigned his seat in the Federal Parliament.

(3) If a member of a House of the Provincial Legislature—

(a) becomes subject to any of the disqualifications mentioned in sub-section (1) of the next succeeding section; or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be,

his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of a House of the Provincial Legislature is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued, or is adjourned for more than four consecutive days.

Disqualifications for membership.
[Cf. Government of India Act, 1935, s. 69.]

141. (1) A person shall be disqualified for being chosen as, and for being, a member of a Provincial Legislative Assembly or Legislative Council—

(a) if he holds any office of profit under the Federation or any unit, other than an office declared by Act of the Provincial Legislature not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if, whether before or after the commencement of this Constitution, he has been convicted or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice relating to elections which has been specified in the Sixth Schedule to this Constitution or has been declared by Act of the Provincial Legislature to be an offence or practice entailing disqualification for membership of the Legislature, unless the period specified

in that behalf in that Schedule or by or under the provisions of that Act has elapsed;

- (e) if, whether before or after the commencement of this Constitution, he has been convicted of any other offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years or such shorter period as the Governor may allow in any particular case has elapsed since his release;
- (f) if, having been nominated as a candidate for the Federal Parliament or any Provincial Legislature or having acted as an election agent of any person so nominated, he has failed to lodge a return of election expenses within the time and in the manner required by or under the provisions of the Sixth Schedule to this Constitution or any law for the time being in force, unless five years have elapsed from the date by which the return ought to have been lodged or the Governor has removed the disqualification:

Provided that a disqualification under clause (f) of this sub-section shall not take effect until the expiration of two months from the date by which the return ought to have been lodged or of such longer period as the Governor may in any particular case allow.

(2) A person shall not be capable of being chosen a member of a House of a Provincial Legislature while he is serving a sentence of transportation or of imprisonment for a criminal offence.

(3) When a person who, by virtue of a conviction or a conviction and a sentence, becomes disqualified by virtue of clause (d) or clause (e) of sub-section (1) of this section is at the date of the disqualification a member of a House of the Provincial Legislature, his seat shall, notwithstanding anything in this or the last preceding section, not become vacant by reason of the disqualification until three months have elapsed from the date thereof or, if within those three months an appeal or petition for revision is brought in respect of the conviction or the sentence, until that appeal or petition is disposed of, but during any period during which his membership is preserved by this sub-section, he shall not sit or vote.

(4) For the purposes of this section a person shall not be deemed to hold an office of profit under the Federation

or any unit by reason only that he is a Minister either for the Federation or for a Province.

Penalty for sitting and voting before making declaration under section 139 or when not qualified or when disqualified.

[Cf. Government of India Act, 1935, s. 70.]

Privileges etc.

of members.
[Cf. Government of India Act, 1935, s. 71.]

[Cf. Commonwealth of Australia Constitution Act, Ch. I, s. 49.]

Salaries and allowances of members.

[Cf. Government of India Act, 1935, s. 72.]

Introduction of Bills etc.

142. If a person sits or votes as a member of a Provincial Legislative Assembly or Legislative Council before he has complied with the requirements of section 139 or when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of the last preceding section, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Province.

143. (1) Subject to the provisions of this Constitution and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(2) In other respects the privileges and immunities of the members of a House of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(3) The provisions of sub-sections (1) and (2) of this section shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House as they apply in relation to members of the Provincial Legislature.

144. Members of Provincial Legislative Assemblies and Legislative Councils shall be entitled to receive such salaries and allowances as may from time to time be determined by Act of the Provincial Legislature, and until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Legislative Assembly of the Province.

Legislative procedure

145. (1) Subject to the provisions of section 153 with respect to financial Bills, a Bill may originate in either

House of the Legislature of a Province which has a Legislative Council.

[Cf. Government of India Act, 1935, s. 73.]

(2) A Bill pending in the Legislature of a Province shall not lapse by reason of the prorogation of the House or Houses thereof.

(3) A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(4) A Bill which is pending in the Legislative Assembly of a Province, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

146. (1) Subject to the provisions of this section, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Houses, either without amendments or with such amendments only as are agreed to by both Houses.

Passing of Bills in Provinces having Legislative Councils.

[Cf. Government of India Act, 1935, s. 74.]

(2) If a Bill which has been passed by the Legislative Assembly and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that if it appears to the Governor that the Bill relates to finance, he may summon the Houses to meet in a joint sitting for the purpose aforesaid notwithstanding that the said period of twelve months has not elapsed.

(3) If at a joint sitting of the two Houses summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendments shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned by the

Legislative Council, only such amendments as aforesaid shall be proposed in the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

Assent to Bills.
[Cf. Government of India Act, 1935, s. 75.]

147. A Bill which has been passed by the Provincial Legislative Assembly or, in the case of a Province having a Legislative Council, has been passed by both Houses of the Provincial Legislature, shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that where there is only one House of the Legislature of a Province and the Bill has been passed by that House the Governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned the House shall reconsider it accordingly and if the Bill is passed again by the House with or without amendments and presented to the Governor for assent, the Governor shall not withhold assent therefrom.

Bills reserved for consideration.
[Cf. Government of India Act, 1935, s. 76.]

148. When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Provided that the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Provincial Legislature together with such a message as is mentioned in the proviso to the last preceding section and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by them with or without amendments, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

Annual financial statement

149. (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the

Legislature of the Province a statement of estimated receipts and expenditure of the Province for that year, in this Part of this Constitution referred to as the "annual financial statement".

[Cf. Government of India Act, 1935, s. 78.]

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of the Province; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of the Province;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenue of each Province—

(a) the emoluments and allowances of the Governor and other expenditure relating to his office;

(b) debt charges for which the Province is liable including interest, sinking fund charges, and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(c) expenditure in respect of the salaries and allowances of judges of any High Court;

(d) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(e) any other expenditure declared by this Constitution or an Act of the Provincial Legislature to be so charged.

150. (1) So much of the estimates of expenditure as relates to expenditure charged upon the revenues of a Province shall not be submitted to the vote of the Legislative Assembly, but nothing in this section shall be construed as preventing the discussion in the Legislature of those estimates.

Procedure in legislature with respect to estimates.
[Cf. Government of India Act 1935, s. 79.]

(2) So much of the said estimates as relates to other expenditure shall be submitted, in the form of demands for grants, to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to a demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

Authentication of schedule of authorised expenditure.

[Cf. Government of India Act, 1935, s. 80.]

151. (1) The Governor shall authenticate by his signature a schedule specifying—

(a) the grants made by the Assembly under the last preceding section;

(b) the several sums required to meet the expenditure charged on the revenues of the Province, but not exceeding, in the case of any sum, the sum shown in the statement previously laid before the House or Houses.

(2) The schedule so authenticated shall be laid before the Assembly but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next succeeding section, no expenditure from the revenues of the Province shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

Supplementary statements of expenditure.

[Cf. Government of India Act, 1935, s. 81.]

152. If in respect of any financial year further expenditure from the revenues of the Province becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the House or Houses a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding sections shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Special provisions as to financial Bills.

[Cf. Government of India Act, 1935, s. 82.]

153. (1) A Bill or amendment making provision—

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the Province or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure,

shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council.

(2) A Bill or amendment shall not be deemed to make provision for any of the purposes aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand and payment of fees for licences or fees for services rendered, or by reason that it

[Cf. Irish Constitution, Art. 22(1) 2°.]

provides for the imposition or increase of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a House of the Provincial Legislature unless the Governor has recommended to that House the consideration of the Bill.

Procedure generally

154. (1) A House of a Provincial Legislature may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

Rules of procedure.
[Cf. Government of India Act, 1935, s. 84.]

(2) In a Province having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(3) Until rules are made under this section the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Province shall have effect in relation to the Legislature of that Province subject to such modifications and adaptations as may be made therein by the Chairman of the Legislative Council or the Speaker of the Legislative Assembly, as the case may be.

(4) At a joint sitting of the two Houses the Chairman of the Legislative Council, or in his absence such person as may be determined by rules of procedure made under this section, shall preside.

155. (1) *In the Legislature of a Province business shall be transacted in the language or languages commonly used in that Province or in Hindustani (Hindi or Urdu) or in the English language.*

Language to be used in the Provincial Legislature.

(2) *The Speaker of the Legislative Assembly or the Chairman of the Legislative Council shall, whenever he thinks fit, make arrangements for making available in the Assembly or the Council, as the case may be, a summary of the speech delivered by a member in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.*

156. No discussion shall take place in a Provincial Legislature with respect to the conduct of any judge of the

Restrictions on discussion in the Legislature.

[Cf. Government of India Act, 1935, s. 86 (1).]

Courts not to inquire into proceedings of the Legislature.
[Cf. Government of India Act, 1935, s. 87.]

Elections to the Legislature.
[Cf. Government of India Act, 1935, s. 291.]

Supreme Court or of a High Court in the discharge of his duties.

Explanation: In this sub-section, the reference to a High Court shall be construed as including a reference to a Court in a Federated State which is a High Court for any of the purposes of Chapter IV of Part IV of this Constitution.

157. (1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of a Provincial Legislature in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business or for maintaining order in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Elections to the Legislature

158. (1) The Provincial Legislature may, from time to time, make provision with respect to all or any of the following matters, that is to say—

- (a) the delimitation of territorial constituencies for the purpose of elections to the Provincial Legislature;
- (b) the disqualifications for voting at such elections on the ground of non-residence or personal disabilities not based on birth, race, religion or community and the preparation of electoral rolls for such elections;
- (c) the qualifications for being elected as a member of either House of the Provincial Legislature;
- (d) the filling of casual vacancies in either House of the Provincial Legislature;
- (e) the conduct of elections to the Provincial Legislature and the methods of voting thereat;
- (f) the expenses of candidates at such elections;
- (g) corrupt practices and other offences at or in connection with such elections;
- (h) the decision of doubts and disputes arising out of or in connection with such elections;
- (i) matters ancillary to any such matter as aforesaid.

(2) Any provision under sub-section (1) which has the effect of amending any of the provisions of the Sixth Schedule to this Constitution shall be deemed to be, and shall be made in accordance with the procedure prescribed for, an amendment of the Constitution,

Chapter IV—Legislative Powers of the Governor

159. (1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Power of Governor to promulgate Ordinances during recess of Legislature.

[Cf. Government of India Act, 1935, s. 88.]

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if an Act of the Provincial Legislature containing the same provisions would under the provisions of this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such Ordinance—

(a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor.

(3) If and so far as an Ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Parliament or an existing law with respect to a matter enumerated in the Concurrent Legislative List, an Ordinance promulgated under this section in pursuance of instructions from the President shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the President and assented to by him.

Chapter V—Provisions in case of Grave Emergencies

160. (1) If at any time the Governor of a Province is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the Province and that it is

Power of Governor in grave emergencies.

[Cf. Government of India Act, 1935, s. 93.]

not possible to carry on the Government of the Province with the advice of his Ministers in accordance with the provisions of this Constitution, he may, by proclamation—

- (a) declare that his functions shall, to such extent as may be specified in the proclamation, be exercised by him in his discretion;
- (b) assume to himself all or any of the functions of the Government and all or any of the powers vested in or exercisable by any Provincial body or authority, and any such proclamation may contain such incidental and consequential provisions as may appear to him necessary or desirable for giving effect to the objects of the proclamation including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any Provincial body or authority:

Provided that nothing in this sub-section shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend, either in whole or in part, the operation of any provision of this Constitution relating to High Courts.

(2) The proclamation shall be forthwith communicated by the Governor to the President of the Federation who may thereupon either revoke the proclamation or take such action as he considers appropriate in exercise of the emergency powers vested in him under section 182.

(3) A proclamation under this section shall cease to operate at the expiration of two weeks unless revoked earlier by the Governor or by the President by public notification.

(4) The functions of the Governor under this section shall be exercised by him in his discretion.

Chapter VI—Scheduled and Tribal Areas

Definitions.

161. In this Constitution—

- (a) the expression “scheduled areas” means the areas specified in Parts I to VII of the table appended to paragraph...of the Seventh Schedule to this Constitution in relation to the Provinces to which those Parts respectively relate;
- (b) the expression “tribal areas” means the areas specified in Parts I and II of the table appended to paragraph...of the Eighth Schedule to this Constitution.

Administration of scheduled

162. (1) The provisions of the Seventh Schedule to this Constitution shall apply to the administration and control

of the scheduled areas and scheduled tribes in any Province.

and tribal areas.

(2) The provisions of the Eighth Schedule to this Constitution shall apply to the administration of the tribal areas in the Province of Assam.

Chapter VII—The High Courts in the Provinces

163. (1) The following courts shall in relation to the territories within the Governors' and Chief Commissioners' Provinces be deemed to be High Courts for the purposes of this Constitution, that is to say, the High Courts in Calcutta, Madras, Bombay, Allahabad, Patna and Nagpur, the High Court of East Punjab, the Chief Court in Oudh, any other court in any of these Provinces constituted or reconstituted under this chapter as a High Court, and any other comparable court in any of these Provinces which may be declared by an Act of the appropriate Legislature to be a High Court for the purposes of this Constitution :

Meaning of "High Court".
[Cf. Government of India Act, 1935, s. 219.]

Provided that if provision is made by the appropriate Legislature for the establishment of a High Court to replace any court or courts mentioned in this sub-section, then, as from the establishment of the new court, this section shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.

(2) The provisions of this chapter shall apply to every High Court in the territories of the Federation other than a Federated State.

164. (1) Every High Court shall be a court of record and shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

Constitution of High Courts.
[Cf. Government of India Act, 1935, s. 220.]

Provided that the judges so appointed together with any additional judges appointed by the President in accordance with the following provisions of this chapter shall at no time exceed in number such maximum as the President may by order fix in relation to that court.

(2) Every judge of a High Court in any Province shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of the Supreme Court, the Governor of the Province and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court of the Province, and shall hold office until he attains the age of sixty years or such higher age as may be fixed in this behalf by Act

of the Provincial Legislature :

Provided that—

- (a) a judge may, by resignation under his hand addressed to the Governor, resign his office;
 - (b) a judge may be removed from his office by the President in the manner provided in sub-section (4);
 - (c) the office of a judge shall be vacated by his being appointed by the President to be a judge of the Supreme Court or of another High Court.
- (3) A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of the Federation, and—
- (a) is a barrister of England or Northern Ireland of at least ten years' standing or a member of the Faculty of Advocates in Scotland of at least ten years' standing; or
 - (b) has for at least five years held a judicial office in any Governor's or Chief Commissioner's Province not inferior to that of a subordinate judge, or judge of a small cause court; or
 - (c) has for at least ten years been a pleader of any High Court, or of two or more such courts in succession.

Explanation : In computing for the purposes of this sub-section the standing of a barrister or a member of the Faculty of Advocates, or the period during which a person has been a pleader, any period during which the person has held judicial office after he became a barrister, a member of the Faculty of Advocates, or a pleader, as the case may be, shall be included and in computing the period during which a person has served as a judge of a High Court or been a pleader of a High Court or held judicial office in any Governor's or Chief Commissioner's Province, any period before the commencement of this Constitution during which he has served as a judge or been a pleader, of any High Court in any Governor's or Chief Commissioner's Province of India or Pakistan or has held judicial office in such Province, as the case may be, shall be included.

(4) A judge of a High Court shall not be removed from his office except by an order of the President passed on an address being presented in accordance with the procedure prescribed in this behalf by an Act of the Federal Parliament to the President by both Houses of the

Federal Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Every person appointed to be a judge of a High Court shall, before he enters upon his office, make and subscribe before the Governor or some person appointed by him a declaration according to the form set out in that behalf in the Third Schedule to this Constitution.

165. The judges of the several High Courts shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pension, as may from time to time be determined by or under Act of the Provincial Legislature, and until they are so determined, shall be entitled to such salaries, allowances, and rights in respect of leave and pension as are specified in the Second Schedule to this Constitution :

Provided that neither the salary of a judge, nor his rights in respect of leave of absence or pension, shall be varied to his disadvantage after his appointment.

166. (1) If the office of Chief Justice of a High Court becomes vacant, or if any such Chief Justice is by reason of absence, or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by the President to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the President may appoint for the purpose.

(2) If the office of any other judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a Chief Justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the President may appoint a person duly qualified for appointment as a judge to act as a judge of that court, and the person so appointed shall, unless the President thinks fit to revoke his appointment, be deemed to be a judge of that court until some person appointed by the President to the vacant office has entered on the duties thereof or until the permanent judge has resumed his duties.

(3) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court, it appears to the President that the number of the judges of the court should be for the time

*Salaries etc.
of judges.
[Cf. Govern-
ment of India
Act, 1935,
s. 221.]*

*Temporary and
additional jud-
ges.
[Cf. Govern-
ment of India
Act, 1935,
s. 222.]*

being increased, the President may, subject to the foregoing provisions of this chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

Jurisdiction of existing High Courts.
[Cf. Government of India Act, 1935, s. 223.]

167. (1) Subject to the provisions of this Part of this Constitution and to any provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of this Constitution.

(2) Every High Court shall have power to issue any prerogative writs or directions by way of substituted remedies therefor throughout the areas subject to its appellate jurisdiction.

Administrative functions of High Courts.
[Cf. Government of India Act, 1915, s. 107 and Government of India Act, 1935, s. 224.]

168. (1) Every High Court shall have superintendence over all courts in the territories of the Federation for the time being subject to its appellate jurisdiction and may do any of the following things, that is to say—

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (e) settle tables of fees to be allowed to the sheriffs, attorneys and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

169. (1) If on an application made in accordance with the provisions of this section a High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it shall exercise that power.

Transfer of certain cases to High Court for trial.
[Cf. Government of India Act, 1935, s. 225.]

(2) An application for the purposes of this section shall not be made, except in relation to a Federal Act, by the Advocate-General for the Federation and, in relation to a Provincial Act, by the Advocate-General for the Federation or the Advocate-General for the Province.

170. The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court shall be charged upon the revenues of the Province, and any fees or other moneys taken by the court shall form part of those revenues.

Expenses of High Courts.
[Cf. Government of India Act, 1935, s. 228.]

171. (1) The Legislature of a Province may by Act constitute a High Court for the Province or any part thereof or re-constitute in like manner any existing High Court for that Province or for any part thereof, or, where there are two High Courts in that Province, amalgamate those courts.

Power to constitute or re-constitute High Court.
[Cf. Government of India Act, 1935, s. 229.]

(2) Where any court is re-constituted, or two courts are amalgamated, as aforesaid, the Act of the Provincial Legislature shall provide for the continuance in their respective offices of *such of* the existing judges, officers and servants of the court or courts, *as may be deemed necessary* for the carrying on before the re-constituted court or the new court of all pending matters, and may contain such other provision as may appear to be necessary by reason of the re-constitution or amalgamation.

172. (1) The Federal Parliament may, if satisfied that an agreement in that behalf has been made between the Governments concerned, extend the jurisdiction of a High Court in any Province to any area within the territories of the Federation not forming part of that Province, and the High Court shall thereupon have the same jurisdiction in relation to that area as it has in relation to any other area in relation to which it exercises jurisdiction.

Extra provincial jurisdiction of High Courts.
[Cf. Government of India Act, 1935, s. 230.]

(2) Nothing in this section affects the provisions of any law or letters patent in force immediately before the commencement of this Constitution empowering any High Court to exercise jurisdiction in relation to more than one

Province or in relation to a Province and an area not forming part of any Province.

(3) Where a High Court exercises jurisdiction in relation to any area or areas outside the Province in which it has its principal seat, nothing in this Constitution shall be construed—

(a) as empowering the Legislature of the Province in which the court has its principal seat to increase, restrict or abolish that jurisdiction, or

(b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the Court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

Saving and definitions.
[Cf. Government of India Act, 1935, s. 231.]

173. (1) Any judge appointed before the commencement of this Constitution to any High Court shall continue in office and shall be deemed to have been appointed under this part of this Constitution, but shall not by virtue of this Constitution be required to relinquish his office at any earlier age than he would have been required so to do, if this Constitution had not been passed.

(2) Where a High Court exercises jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of a Province, references in this chapter to the Governor in relation to the judges of a High Court and references to the revenues of the Province shall be construed as references to the Governor and the revenues of the Province in which the court has its principal seat, and the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor of the Province in which the subordinate court is situate, or, if it is situate in an area not forming part of a Province, by the President.

Chapter IX—Auditor-General of the Province

Provincial Auditor-General.
[Cf. Government of India Act, 1935, s. 167.]

174. (1) The Legislature of a Province may by Act provide for the appointment of an Auditor-General for the Province and when such provision has been made an Auditor-General for that Province may be appointed by the Governor in his discretion and the Auditor-General so appointed shall only be removed from office in like manner and on the like grounds as a judge of the High Court of the Province:

Provided that no appointment of an Auditor-General in a Province shall be made until the expiration of at least three years from the date of the publication after assent of the Act of the Provincial Legislature by which provision is made for the appointment of an Auditor-General of that Province.

(2) Every such Act shall prescribe the conditions of service of the Auditor-General and the duties which shall be performed and the powers which shall be exercised by the Auditor-General in relation to the accounts of the Province and shall declare the salary, allowances and pension payable to or in respect of the Auditor-General to be charged on the revenues of the Province.

(3) The Auditor-General of the Province shall be eligible for appointment as Auditor-General of the Federation but not for any other appointment either under the Federation or under the Government of a unit after he has ceased to hold office.

(4) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-General shall be paid out of the revenues of the Province.

(5) Nothing in this section shall derogate from the power of the Auditor-General of the Federation to give such directions in respect to the accounts of the Provinces as are mentioned in section 108 of this Constitution.

175. The reports of the Auditor-General of the Federation or of the Province, as the case may be, relating to the accounts of a Province shall be submitted to the Governor of the Province, who shall cause them to be laid before the Provincial Legislature.

Audit Reports.
[Cf. Government of India Act, 1935, s. 169.]

*PART VI—THE CHIEF COMMISSIONERS' PROVINCES

176. (1) *The following shall be the Chief Commissioners' Provinces, that is to say, the heretofore existing Chief Commissioners' Provinces of Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands, the area known as Panth Piploda, and such other Chief Commissioners' Provinces as may be created under this Constitution.*

Chief Commissioners' Provinces.
[Cf. Government of India Act, 1935, s. 94.]

(2) *A Chief Commissioner's Province shall be administered by the President acting, to such extent as he thinks*

**Note: This Part will require revision after the Committee on Chief Commissioners' Provinces have submitted their report.*

fit, through a Chief Commissioner to be appointed by him.

The Andaman and Nicobar Islands.

177. *The President may make regulations for the peace and good government of the Andaman and Nicobar Islands and any regulations so made may repeal or amend any Act of the Federal Parliament or any existing law which is for the time being applicable to the Province and, when promulgated by the President, shall have the same force and effect as an Act of the Federal Parliament which applies to the Province.*

Coorg.

178. *Until other provision is made by or under any Act of the Federal Parliament, the constitution, powers and functions of the Coorg Legislative Council, and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall remain unchanged.*

PART VII—DISTRIBUTION OF LEGISLATIVE POWERS

Extent of Federal and Provincial Laws.

[Cf. Government of India Act, 1935, s. 99.]

Subject-matter of Federal and Provincial Laws.

[Cf. Government of India Act, 1935 s. 100.]

179. *Subject to the provisions of this Constitution the Federal Parliament may make laws, including laws having extra-territorial operation, for the whole or any part of the territories of the Federation and a Provincial Legislature may make laws for the Province or for any part thereof.*

180. (1) *Notwithstanding anything in the two next succeeding sub-sections, the Federal Parliament has, and a Provincial Legislature has not, power to make laws with respect to any of the matters enumerated in List I in the Ninth Schedule to this Constitution (hereinafter called the "Federal Legislative List").*

(2) *Notwithstanding anything in the next succeeding sub-section, the Federal Parliament, and, subject to the preceding sub-section, a Provincial Legislature also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the "Concurrent Legislative List").*

(3) *Subject to the two preceding sub-sections, the Provincial Legislature has, and the Federal Parliament has not, power to make laws for a Province or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the "Provincial Legislative List").*

(4) *The Federal Parliament has power to make laws with respect to matters enumerated in the Provincial Legislative List except for a Province or any part thereof.*

181. *Notwithstanding anything contained in section 180, the power of the Federal Parliament to make laws for a Federated State or a group of Federated States shall be subject to the terms of any agreement entered into in that behalf by that State or group of States with the Federation and the limitations contained therein.*

Extent of power to legislate for States.
[Cf. Government of India Act, 1935, s. 101.]

182. (1) Notwithstanding anything in the preceding sections of this Part, the Federal Parliament shall have power—

Power of Federal Parliament to legislate if an emergency is declared.
[Cf. Government of India Act, 1935, s. 102.]

(a) if the President has declared by proclamation that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance, then, to make laws for any Province or any part thereof, and

(b) if the President has, on receipt of a proclamation issued by the Governor of a Province under section 160, declared by proclamation under this sub-section that a grave emergency exists whereby the peace and tranquillity of that Province is threatened, then, to make laws for that province or any part thereof, with respect to any of the matters enumerated in the Provincial Legislative List.

(2) Nothing in this section shall restrict the power of a Provincial Legislature to make any law which under this Constitution it has power to make, but if any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Parliament has under this section power to make, the Federal law, whether passed before or after the Provincial law shall prevail, and the Provincial law shall to the extent of the repugnancy, but so long only as the Federal law continues to have effect, be inoperative.

(3) A proclamation issued under clause (a) or clause (b) of sub-section (1) (in this Constitution referred to as "a Proclamation of Emergency")—

(a) may be revoked by a subsequent proclamation;

(b) shall be laid before each House of the Federal Parliament;

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by resolutions of both Houses of the Federal Parliament.

(4) A law made by the Federal Parliament which the Parliament would not but for the issue of a Proclamation of

Emergency have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of six months after the proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

(5) A Proclamation of Emergency declaring that the security of India is threatened by war or by internal disturbance may be made before the actual occurrence of war or of any such disturbance if the President is satisfied that there is imminent danger thereof.

Power of Federal Parliament to legislate for one or more units by consent and adoption of such legislation by any other unit. [Cf. Commonwealth of Australia Constitution Act, Sec. 51 (xxxvii) & Government of India Act, 1935, s. 103.]

183. (1) *If it appears to the Legislature or Legislatures of one or more units to be desirable that any of the matters with respect to which the Federal Parliament has no power to make laws for the unit or units except where a Proclamation of Emergency has been issued under subsection (1) of section 182 should be regulated in such unit or units by Act of the Federal Parliament and a resolution or resolutions to that effect is or are passed by the House, or where there are two Houses, by both the Houses of the Legislature or Legislatures of the unit or units, it shall be lawful for the Federal Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such unit or units or to any other unit by which it is adopted afterwards by a resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that unit.*

(2) Any Act so passed by the Federal Parliament may, as respects any unit to which it applies, be amended or repealed by an Act of the Legislature of that unit.

Inconsistency between Federal laws and Provincial or State laws. [Cf. Government of India Act, 1935, s. 107.]

184. (1) *If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void.*

(2) *Where a Provincial law with respect to one of the matters enumerated in the Concurrent Legislative List contains any provision repugnant to the provisions of an earlier Federal law or any existing law with respect to that*

matter, then, if the Provincial law, having been reserved for the consideration of the President, has received the assent of the President, the Provincial law shall in that Province prevail, but nevertheless the Federal Parliament may at any time enact further legislation with respect to the same matter.

(3) If any provision of a law of a Federated State is repugnant to a Federal law which extends to that State, the Federal law, whether passed before or after the law of the State, shall prevail and the law of the State shall, to the extent of the repugnancy, be void.

185. No Act of the Federal Parliament or a Provincial Legislature and no provision in any such Act shall be invalid by reason only that some recommendation was not given, if assent to that Act was given—

- (a) where the recommendation required was that of the Governor, either by the Governor or by the President;
- (b) where the recommendation required was that of the President, by the President.

Requirements as to recommendations to be regarded as matters of procedure only.
[Cf. Government of India Act, 1935, s. 109 (2).]

PART VIII—ADMINISTRATIVE RELATIONS BETWEEN FEDERATION AND UNITS

General

186. The executive authority of every unit shall be so exercised as to secure respect for the laws of the Federal Parliament and any existing laws which apply in that unit and the executive authority of the Federation shall extend to the giving of such directions to a unit as may appear to the Federal Government to be necessary for this purpose.

187. (1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a unit, entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive authority of the Federation extends.

(2) An Act of the Federal Parliament which applies in any unit may, notwithstanding that it relates to a matter with respect to which the Legislature of the unit has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the unit or officers and authorities thereof.

(3) Where by virtue of this section powers and duties have been conferred or imposed upon a unit or officers or

Obligation of units and Federation.
[Cf. Government of India Act, 1935, s. 122.]

Power of Federation to confer powers, etc. on units in certain cases.
[Cf. Government of India Act, 1935, s. 124.]

authorities thereof, there shall be paid by the Federation to the unit such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of the Supreme Court, in respect of any extra costs of administration incurred by the unit in connection with the exercise of those powers and duties.

Power of Federation to undertake legislative, executive or judicial functions in an Indian State.

188. (1) The Federation may by agreement with any Federated State, but subject to the provisions of this Constitution in regard to the relationship between the Federation and the Federated State, undertake any executive, legislative or judicial functions vested in that State.

(2) The Federation may also enter into such an agreement with an Indian State which is not a Federated State, but every such agreement shall be subject to and governed by any Act relating to the exercise of foreign jurisdiction by the Federal Parliament.

(3) If an agreement entered into with an Indian State under sub-section (1) or sub-section (2) provides for any matter with respect to which provision has been already made in an agreement entered into with a Federated State by a Province under section 189, then the latter agreement shall, in so far as it provides for such matter, be deemed to be revoked and of no effect on and from the date of conclusion of the former agreement.

(4) On an agreement under sub-section (1) being concluded with an Indian State—

(a) the executive authority of the Federation shall extend to any matter specified in that behalf in such agreement;

(b) the Federal Parliament shall have power to make laws with respect to any matter specified in that behalf in such agreement; and

(c) the Supreme Court of the Federation shall, subject to the provisions of sub-section (2) of section 96, have jurisdiction with respect to any matter specified in that behalf in such agreement.

Power of the Province to undertake legislative, executive or judicial functions in an Indian State.

189. (1) It shall be competent for a Province with the previous sanction of the President to undertake, by an agreement made in that behalf with any Indian State, any legislative, executive or judicial functions vested in that State if such agreement relates to a matter which is enumerated in the Provincial or the Concurrent Legislative List.

(2) On an agreement under sub-section (1) being concluded with an Indian State—

- (a) the executive authority of the Province shall extend to any matter specified in that behalf in such agreement;
- (b) the Provincial Legislature shall have power to make laws with respect to any matter specified in that behalf in such agreement; and
- (c) the High Court and other appropriate courts in the Province shall have jurisdiction with respect to any matter specified in that behalf in such agreement.

190. The executive authority of every unit shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation and the executive authority of the Federation shall extend to the giving of such directions to a unit as may appear to the Federal Government to be necessary for that purpose.

191. Where a Proclamation of Emergency is in operation whereby the President has declared that the security of India or the peace and tranquillity of any Province is threatened, then, notwithstanding anything contained in this Constitution—

- (a) the executive authority of the Federation shall extend to the giving of directions to any unit or to the Province concerned, as the case may be, as to the manner in which the executive authority thereof is to be exercised;
- (b) any power of the Federal Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Federation or officers and authorities of the Federation as respects that matter.

Broadcasting

192. (1) The Federal Government shall not unreasonably refuse to entrust to the Government of any unit such functions with respect to broadcasting as may be necessary to enable that Government—

- (a) to construct and use transmitters in the unit;
- (b) to regulate, and impose fees in respect of, the construction and use of transmitters and the use of receiving apparatus in the unit:

Provided that nothing in this sub-section shall be construed as requiring the Federal Government to entrust to

Duty of units not to impede or prejudice Federal authority.

[Cf. Government of India Act, 1935, ss. 126 (1) & 128.]

Effect of Proclamation of Emergency.

[Cf. Government of India Act, 1935, s. 126A.]

Broadcasting.

[Cf. Government of India Act, 1935, s. 129.]

the Government of any such unit any control over the use of transmitters constructed or maintained by the Federal Government or by persons authorised by the Federal Government, or over the use of receiving apparatus by persons so authorised.

(2) Any functions so entrusted to a Government of a unit shall be exercised subject to such conditions as may be imposed by the Federal Government, including, notwithstanding anything in this Constitution, any conditions with respect to finance, but it shall not be lawful for the Federal Government so to impose any conditions regulating the matter broadcast by, or by authority of, the Government of the unit.

(3) Any Federal laws which may be passed with respect to broadcasting shall be such as to secure that effect can be given to the foregoing provisions of this section.

(4) If any question arises under this section whether any conditions imposed on the Government of any such unit are lawfully imposed, or whether any refusal by the Federal Government to entrust functions is unreasonable, the question shall be determined by the President acting as an arbitrator.

Co-operation between units

193. If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

- (a) inquiring into and advising upon disputes which may have arisen between units;
- (b) investigating and discussing subjects in which some or all of the units, or the Federation and one or more units have a common interest; or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject,

it shall be lawful for the President by Order to establish such a Council and to define the nature of the duties to be performed by it and its organisation and procedure.

An order establishing any such Council may make provision for representatives of any part of the territories of the Federation to participate in the work of the Council.

194. (1) *The President may, at any time, and shall on the expiry of ten years from the commencement of this Constitution, by Order, institute a commission to report on*

*Provisions
with respect to
an inter-unit
Council.
[Cf. Govern-
ment of India
Act, 1935,
s. 135.]*

*Control of
Federation
over the
administration*

the administration of the scheduled areas and the welfare of the Scheduled Tribes in the Provinces. The Order may define the composition, powers and procedure of the commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

of scheduled areas and welfare of Scheduled Tribes in the Provinces.

(2) *The executive authority of the Federation shall extend to the giving of directions to a Province as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the Province.*

PART IX—FINANCE, PROPERTY, CONTRACTS AND SUITS

Chapter I—Finance

Distribution of revenues between the Federation and units

194-A. In this Part, the expression "unit" does not include a Chief Commissioner's Province.

Interpretation.

195. Subject to the following provisions of this chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to units, the expression "revenues of the Federation" includes all revenues and public moneys raised or received by the Federation and the expression "revenues of the Province" includes all revenues and public moneys raised or received by a Province.

Meaning of "revenues of Federation" and "revenues of Province". [Cf. Government of India Act, 1935, s. 136.]

196. *Duties in respect of succession to property other than agricultural land, estate duty in respect of property other than agricultural land, such stamp duties as are mentioned in the Federal Legislative List, terminal taxes on goods or passengers carried by railway, or air, and taxes on railway fares and freights, shall be levied and collected by the Federation, but the net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that duty or tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be formulated by Act of the Federal Parliament:*

Certain succession duties, stamp duties, terminal taxes and taxes on fares and freights. [Cf. Government of India Act, 1935, s. 137.]

Provided that the Federal Parliament may at any time increase any of the said duties or taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

Taxes on income.
[Cf. Government of India Act, 1935, s. 138 (1) and (4).]

197. (1) *Taxes on income other than agricultural income shall be levied and collected by the Federation, but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in such manner and from such time as may be prescribed :*

Provided that the Federal Parliament may at any time increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

For the purposes of this sub-section, in each financial year such percentage as may be prescribed, of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Federal emoluments shall be deemed to represent proceeds attributable to Chief Commissioners' Provinces.

(2) *In this section—*

"taxes on income" does not include a corporation tax;

"prescribed" means prescribed by Act of the Federal Parliament; and

"Federal emoluments" includes all emoluments and pensions payable out of the revenues of the Federation in respect of which income-tax is chargeable.

198. (1) *No duties on salt shall be levied by the Federation.*

(2) *Federal duties of excise and export duties shall be levied and collected by the Federation, but, if an Act of the Federal Parliament so provides, there shall be paid out of the revenues of the Federation to the units to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the units in accordance with such principles of distribution as may be formulated by the Act.*

(3) *Notwithstanding anything in the preceding sub-section, such proportion as the Federal Parliament may by Act determine, of the net proceeds in each year of any*

Salt duties, excise duties and export duties.
[Cf. Government of India Act, 1935, s. 140.]

export duty on jute or jute products shall not form part of the revenues of the Federation, but shall be assigned to the units in which jute is grown in proportion to the respective amounts of jute grown therein.

199. Such sums as may be prescribed by Act of the Federal Parliament shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of such units as the Parliament may determine to be in need of assistance, and different sums may be prescribed for different units:

Grants from Federation to certain units. [Cf. Government of India Act, 1935, s. 142.]

Provided that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of a Province such capital and recurring sums as may be necessary to enable that Province to meet the costs of such schemes of development as may be undertaken by the Province with the approval of the Federal Government for the purpose of promoting the welfare of the Scheduled Tribes in the Province or raising the level of administration of the scheduled areas in the Province to that of the administration of the rest of the Province:

Provided further that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of the Province of Assam sums, capital and recurring, equivalent to—

- (a) the average excess of expenditure over the revenues during the three years immediately preceding the date of commencement of this Constitution in respect of the administration of the areas specified in Part I of the table appended to paragraph 19 of the Eighth Schedule to this Constitution; and
- (b) the costs of such schemes of development as may be undertaken by that Province with the approval of the Federal Government for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the Province.

200. (1) *Notwithstanding anything in section 180 of this Constitution, no law of a unit relating to taxes for the benefit of the unit or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income.*

Taxes on professions, trades, callings and employments. [Cf. Government of India Act, 1935, s. 142A.]

(2) *The total amount payable in respect of any one person to the unit or to any one municipality, district board,*

local board or other local authority in the unit by way of taxes on professions, trades, callings and employments shall not exceed fifty rupees per annum :

Provided that, if in the financial year immediately preceding the commencement of this Constitution there was in force in any unit or any such municipality, board or authority a tax on professions, trades, callings, or employments the rate, or the maximum rate, of which exceeded fifty rupees per annum, the preceding provisions of this sub-section shall, unless for the time being provision to the contrary is made by a law of the Federal Parliament, have effect in relation to that unit, municipality, board or authority as if for the reference to fifty rupees per annum there were substituted a reference to that rate or maximum rate or such lower rate, if any (being a rate greater than fifty rupees per annum) as may for the time being be fixed by a law of the Federal Parliament; and any law of the Federal Parliament made for any of the purposes of this proviso may be made either generally or in relation to any specified units, municipalities, boards or authorities.

(3) The fact that the Legislature of a unit has power to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting, in relation to professions, trades, callings and employments, the generality of the entry in the Federal Legislative List relating to taxes on income.

Savings.
[Cf. Govern-
ment of India
Act, 1935,
s. 143(2).]

201. Any taxes, duties, cesses or fees which, immediately before the commencement of this Constitution, were being lawfully levied by the Government of any unit or by any municipality or other local authority or body for the purposes of the unit, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Federal Legislative List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by the Federal Parliament.

Calculation of
"net proceeds"
etc.
[Cf. Govern-
ment of India
Act, 1935,
s. 144.]

202. (1) In the foregoing provisions of this chapter "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of the Federation, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision in this chapter, an Act of the Federal Parliament may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any unit, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

Miscellaneous Financial Provisions

203. The Federation or a unit may make grants for any purpose, notwithstanding that the purpose is not one with respect to which the Federal Parliament or the Legislature of the unit, as the case may be, may make laws.

Expenditure defrayable out of Federal Revenues.
[Cf. Government of India Act, 1935, s. 150(2).]

204. Rules may be made by the President and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Federation or of the Province, and the rules so made may prescribe, or authorise some person to prescribe, the procedure to be followed in respect of the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

Provisions as to the custody of public moneys.
[Cf. Government of India Act, 1935, s. 151.]

205. The property of the Federation shall, save in so far as any Federal law may otherwise provide, be exempt from all taxes imposed by, or by any authority within, a unit:

Exemption of certain public property from taxation.
[Cf. Government of India Act, 1935, s. 154.]

Provided that, until any Federal law otherwise provides, any property of the Federation which was immediately before the commencement of this Constitution liable, or treated as liable, to any such tax shall, so long as that tax continues, continue to be liable, or to be treated as liable, thereto.

206. Save in so far as any Federal law may otherwise provide, no law of a unit shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by a Government or other person) which is—

Exemptions from taxes on electricity.
[Cf. Government of India Act, 1935, s. 154A.]

- (a) consumed by the Federal Government, or sold to the Federal Government for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of a Federal railway by the Federal Government or a railway company operating that railway, or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of a Federal railway;

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Federal Government for consumption by that Government, or to the Federal Government or any such railway company as aforesaid for consumption in the construction, maintenance or operation of a Federal railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

Exemption of the Governments of units in respect of Federal taxation.

[Cf. Government of India Act, 1935, s. 155(1).]

207. Subject as hereinafter provided, the Government of a unit shall not be liable to Federal taxation in respect of lands or buildings situate within the territories of the Federation or income accruing, arising or received within such territories:

Provided that—

(a) where a trade or business of any kind is carried on by or on behalf of the Government of a unit, nothing in this sub-section shall exempt that Government from any Federal taxation or the levy of a sum in lieu of such taxation in respect of that trade or business or any operations connected therewith or any income arising in connection therewith or any property occupied for the purposes thereof;

(b) nothing in this sub-section shall exempt the Ruler of an Indian State from any Federal taxation in respect of any lands, buildings or income being his personal property or personal income.

Adjustment in respect of certain expenses and pensions.
[Cf. Government of India Act, 1935, s. 156.]

208. Where under the provisions of this Constitution the expenses of any court or commission, or the pension payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India, are charged on the revenues of the Federation or the revenues of a Province, then if—

(a) in the case of a charge on the revenues of the Federation, the court or commission serves any of the separate needs of a Province, or the person has served wholly or in part in connection with the affairs of a Province; or

(b) *in the case of a charge on the revenues of a Province, the court or commission serves any of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the affairs of the Federation or another Province,*

there shall be charged on and paid out of the revenues of the Province or, as the case may be, the revenues of the Federation or of the other Province, such contribution in respect of the expenses or pension as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of the Supreme Court.

Chapter II—Borrowing

209. The executive authority of the Federation extends to borrowing upon the security of the revenues of the Federation within such limits, if any, as may from time to time be fixed by Act of the Federal Parliament and to the giving of guarantees within such limits, if any, as may be so fixed.

*Borrowing by
Federal Gov-
ernment.
[Cf. Govern-
ment of India
Act, 1935,
s. 162.]*

210. (1) Subject to the provisions of this section, the executive authority of a Province extends to borrowing upon the security of the revenues of the Province within such limits, if any, as may from time to time be fixed by Act of the Provincial Legislature, and to the giving of guarantees within such limits, if any, as may be so fixed.

*Borrowing by
units.
[Cf. Govern-
ment of India
Act, 1935,
s. 163.]*

(2) The Federation may, subject to such conditions, if any, as it may think fit to impose, make loans to units or so long as any limits fixed under the last preceding section are not exceeded, give guarantees in respect of loans raised by any unit and any sums required for the purpose of making such loans shall be charged on the revenues of the Federation.

(3) A Province may not without the consent of the Federation raise any loan if there is still outstanding any part of a loan which has been made to the Province by the Federation or its predecessor-Government or in respect of which a guarantee has been given by the Federation or by its predecessor-Government.

A consent under this sub-section may be granted subject to such conditions, if any, as the Federation may think fit to impose.

*Succession to
assets and
debts, rights
and liabilities.*

*Power to
acquire prop-
erty.
[Cf. Govern-
ment of India
Act, 1935, s.
175(1) and (2).]*

*Contracts.
[Cf. Govern-
ment of India
Act, 1935, s.
175 (3) & (4).]*

*Suits and
proceedings.
[Cf. Govern-
ment of India
Act, 1935, s. 176
(1).]*

Chapter III—Property, contracts, liabilities and suits

211. As from the commencement of this Constitution, the Government of the Federation and the Government of each Governor's Province included in the territories of the Federation shall respectively be the successors of the Government of the Dominion of India and of the corresponding Governor's Province as regards all property, assets, debts and liabilities subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

212. (1) The executive authority of the Federation and of each Province shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property held for the purpose of the Government of the Federation or of the Province, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Federation or of a Province shall vest in the Federation or in the Province, as the case may be.

213. (1) All contracts made in the exercise of the executive authority of the Federation or of a Province shall be expressed to be made by the President, or by the Governor of the Province, as the case may be, and all such contracts and all assurances of property made in the exercise of that authority shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President, nor the Governor of a Province, shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing any such contract or assurance on behalf of any of them be personally liable in respect thereof.

214. (1) The Federation may sue or be sued by the name of the Federation of India and the Government of a Province may sue or be sued by the name of the Province and, may, subject to any provisions which may be made by Act of the Federal Parliament or a Provincial

Legislature enacted by virtue of the powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Province might have sued or been sued if this Constitution had not been enacted.

(2) If at the date of commencement of this Constitution any legal proceedings are pending to which the Dominion of India is a party, the Federation shall be deemed to be substituted for the Dominion in those proceedings.

PART X—SERVICES

Chapter I—Defence Services

215. (1) All appointments to services and posts connected with defence and the grant of commissions in any Naval, Military or Air Force within the territories of the Federation shall be regulated by or under Act of the Federal Parliament and until provision in that behalf is so made shall be regulated by rules made by the President.

Recruitment and conditions of Service.

(2) The conditions of service of persons in services, or serving in posts, connected with defence within the territories of the Federation shall be regulated by or under Federal law.

Explanation: In this sub-section, the expression "Federal law" includes any existing law as in force for the time being.

Chapter II—Civil Services

216. (1) The President may, by Order, create such All-India Services as he may consider necessary.

All-India Services.

(2) The recruitment and the conditions of service of persons appointed to any such service shall be regulated by or under Act of the Federal Parliament and until provision in that behalf is so made shall be regulated by rules made by the President.

217. Subject to the provisions of section 216—

(1) appointments to all civil services and civil posts shall be made—

Recruitment to and conditions of other Services.

(a) in the case of services of the Federation and posts in connection with the affairs of the Federation, by the President or such person as he may direct; and

[Cf. Government of India Act, 1935, s. 241.]

(b) in the case of services of a Province and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

(2) The conditions of service of persons serving in a civil capacity shall be such as may be prescribed—

(a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the President or by some person or persons authorised by the President; and

(b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor:

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated at one month's notice or less, and nothing in this sub-section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule-making authority to be a matter not suitable for regulation by rule in the case of that class.

(3) Acts of the appropriate Legislature may notwithstanding anything contained in this section regulate the conditions of service of persons serving under the Federation or a Province in a civil capacity and any rules made under this section shall have effect subject to the provisions of any such Act.

218. Until other provision is made under the appropriate provisions of this Part of this Constitution, any rules which were in force immediately before the commencement of this Constitution and were applicable to any civil service or civil post which has continued to exist after the commencement of this Constitution as a service or post under the Federation or a Province shall continue in force so far as consistent with the provisions of this Constitution, and shall be deemed to be rules made under the appropriate provisions of this Constitution.

Chapter III—Public Service Commissions

219. (1) Subject to the provisions of this section there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

(2) Two or more Provinces may agree—

(a) that there shall be one Public Service Commission for that group of Provinces; or

(b) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces,

Transitional Provisions.
[Cf. Government of India Act, 1935, s. 276.]

Public Service Commissions for the Federation and for the Provinces.
[Cf. Government of India Act, 1935, s. 264.]

and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this Part of this Constitution to be discharged by the Governor of a Province are to be discharged.

(3) The Public Service Commission for the Federation if requested so to do by the Governor of a Province may, with the approval of the President, agree to serve all or any of the needs of the Province.

(4) References in this Constitution to the Federal Public Service Commission or a Provincial Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Federation or, as the case may be, the Province as respects the particular matter in question.

220. (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the President, and in the case of a Provincial Commission, by the Governor of the Province in his discretion:

Composition and staff of Commissions.
[Cf. Government of India Act, 1935, s. 265.]

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Federation or under a Province and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown shall be included.

(2) In the case of the Federal Commission, the President and, in the case of a Provincial Commission, the Governor of the Province in his discretion, may by regulations—

- (a) determine the number of members of the Commission, their tenure of office and their conditions of service; and
 - (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service.
- (3) On ceasing to hold office—
- (a) the Chairman of the Federal Commission shall be ineligible for further employment either under the Federation or under a Province;

- (b) the Chairman of a Provincial Commission shall be eligible for appointment as the Chairman or a member of the Federal Commission or as the Chairman of another Provincial Commission, but not for any other employment either under the Federation or under a Province;
- (c) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment either under the Federation or under a Province without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province and, in the case of any other appointment, of the President.

*Functions of
Public Ser-
vice Commis-
sions.*
[Cf. Govern-
ment of India
Act, 1935,
s. 266.]

221. (1) It shall be the duty of the Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province respectively.

(2) It shall also be the duty of the Federal Public Service Commission, if requested by any two or more Provinces so to do, to assist those Provinces in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Federation, and the Governor as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding sub-section, the Federal Commission or, as the case may be, the Provincial Commission shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- (c) on all disciplinary matters affecting a person serving under the Federation or a Province in a civil

capacity, including memorials or petitions relating to such matters;

- (d) on any claim by or in respect of a person who is serving or has served under the Federation or a Province or under the Crown in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province;
- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Federation or a Province or under the Crown in a civil capacity, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President or, as the case may be, the Governor may refer to them.

(4) Nothing in this section shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Federation or a Province.

222. Subject to the provisions of this section, an Act of the Federal Parliament or of the Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission, or, as the case may be, by the Provincial Public Service Commission:

Provided that where the Act is a Provincial Act, it shall be a term of such Act that the functions conferred by it shall not be exercisable in relation to any person who is not a member of one of the services of the Province except with the consent of the President.

223. The expenses of the Federal or a Provincial Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of the Federation or, as the case may be, the Province.

Power to extend functions of Public Service Commissions.
[Cf. Government of India Act, 1935, s. 267.]

Expenses of Public Service Commissions.
[Cf. Government of India Act, 1935, s. 268.]

PART XI—ELECTIONS

224. The superintendence, direction and control of all elections to the Federal Parliament and to the Provincial

Superintendence, direction and control of all

elections to be vested in an Election Commission.

Elections to the Federal Parliament.

Legislatures and all elections to the offices of President, Vice-President, Governor and Deputy Governor held under this Constitution including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to the Federal Parliament or to the Provincial Legislatures shall be vested in a Commission to be appointed by the President.

225. Subject to the provisions of this Constitution, the Federal Parliament may, from time to time, make provision with respect to all matters relating to or connected with elections to either House of the Federal Parliament including the delimitation of constituencies.

PART XII—MISCELLANEOUS

Claims of minority communities to services and posts.

226. Subject to the provisions of the next succeeding section the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Federation or a Province.

Special provision for Anglo-Indian community in certain services.

227. (1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railways, customs, postal and telegraph services of the Federation shall be made on the same basis as immediately before such commencement.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten *per cent* than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in sub-section (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that sub-section, if such members are found qualified for appointment on merit in comparison with the members of other communities.

Special provision with respect to educational

228. During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Federation and by each

Province for the benefit of the Anglo-Indian community in respect of education as were made in the financial year immediately before such commencement.

grants for the benefit of Anglo-Indian community.

During every succeeding period of three years the grants may be less by ten *per cent* than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution, such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this section unless at least forty *per cent* of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

229. (1) There shall be a Special Officer for minorities for the Federation who shall be appointed by the President, and a Special Officer for minorities for each Province who shall be appointed by the Governor of the Province.

Special officers for minorities for the Federation and the Provinces.

(2) It shall be the duty of the Special Officer for the Federation to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the Federation and to report to the President upon the working of the safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before the Federal Parliament.

(3) It shall be the duty of the Special Officer for a Province to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the Province and to report to the Governor of the Province upon the working of the safeguards at such intervals as the Governor may direct, and the Governor shall cause all such reports to be laid before the Provincial Legislature.

230. (1) The President may, by Order, appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territories of the Federation and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Federation or any unit to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose by the Federation or any unit and the

Appointment of a Commission to investigate the conditions of backward classes.

conditions subject to which such grants should be given, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

*Interpretation,
etc.
[Cf. Govern-
ment of India
Act, 1935,
s. 311.]*

231. (1) In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

- (a) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;
- (b) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territories of the Federation and is or was born within those territories of parents habitually resident therein and not established there for temporary purposes only;
- (c) "an Indian Christian" means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian;
- (d) "borrow" includes the raising of money by the grant of annuities and "loan" shall be construed accordingly;
- (e) "Chief Justice" includes in relation to a High Court a Chief Judge;
- (f) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled :
 - (i) that it is not chargeable in respect of agricultural income;
 - (ii) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;
 - (iii) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;
- (g) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities

and any liability under any guarantee, and "debt charges" shall be construed accordingly;

- (h) "existing law" means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any legislature, authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation and in force in any territories of the Federation immediately before such commencement but does not include any Act of Parliament or any Order in Council made under any such Act;
- (i) "goods" includes all materials, commodities, and articles;
- (j) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount;
- (k) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund;
- (l) "pleader" includes advocate;
- (m) "Provincial Act" and "Provincial law" mean, subject to the provisions of this section, an Act passed or law made by a Provincial Legislature under this Constitution;
- (n) "public notification" means a notification in the Gazette of India. or, as the case may be, the official Gazette of a Province;
- (o) "securities" includes stock;
- (p) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly;
- (q) "tax on income" includes a tax in the nature of an excess profits tax;
- (r) "railway" includes a tramway not wholly within a municipal area;
- (s) "federal railway" does not include an Indian State railway but, save as aforesaid, includes any railway not being a minor railway;
- (t) "Indian State railway" means a railway owned by

a State and either operated by the State, or operated on behalf of the State otherwise than in accordance with a contract made with the State by or on behalf of the Federal Government, or any company operating a federal railway;

- (u) "minor railway" means a railway which is wholly situate in one unit and does not form a continuous line of communication with a federal railway, whether of the same gauge or not;
- (uu) "scheduled tribes" means the tribes or communities specified in Parts I to VIII of the Tenth Schedule to this Constitution in relation to the Provinces to which those Parts respectively relate;
- (v) "unit" means a Governor's Province, a Chief Commissioner's Province, or a Federated State, or, where two or more States have acceded to the Federation as a group, such group.

(2) For the purposes of this Constitution the castes, races or tribes, or parts of or groups within castes, races or tribes specified in Parts I to IX of the Eleventh Schedule to this Constitution shall, in the Provinces to which those parts respectively relate, be deemed to be scheduled castes so far as regards members thereof resident in the localities specified in relation to them respectively in those Parts of that Schedule:

Provided that—

- (a) no Indian Christian shall be deemed to be a member of a Scheduled Caste;
 - (b) in West Bengal no person who professes Buddhism or a tribal religion shall be deemed to be a member of a Scheduled Caste.
- (3) Unless the context otherwise requires the General Clauses Act, 1897 (X of 1897) shall apply for the interpretation of this Constitution.

(4) Any reference in this Constitution to Federal Acts or laws, or Provincial Acts or laws, or to Acts or laws of the Federal Parliament or a Provincial Legislature shall be construed as including a reference to an Ordinance made by the President or, as the case may be, to an Ordinance made by a Governor.

PART XIII—AMENDMENT OF THE CONSTITUTION

Procedure for

232. *An amendment of the Constitution may be initiated*

by the introduction of a Bill for the purpose in either House of the Federal Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given, the Bill containing such amendment shall come into operation :

amendment of the Constitution.

Provided that if such amendment seeks to make any change in—

(a) the Federal Legislative List;

(b) the representation of units in the Federal Parliament; or

(c) the powers of the Supreme Court,

the amendment shall also require to be ratified by the legislatures of units representing a majority of the population of all the units of the Federation in which units representing at least one-third of the population of the Federated States are included :

Provided further that the provisions of this Constitution relating to the reservation of seats for the Muslim community, the Scheduled Castes, the Scheduled Tribes, the Indian Christian community or the Sikh community either in the Federal Parliament or in any Provincial Legislature shall not be amended within the period of ten years from the commencement of this Constitution and shall cease to have effect on the expiration of that period unless continued in operation by an amendment of the Constitution in the manner provided in this section.

Explanation (1) : Where a unit consists of a group of States, the proposed amendment shall, for the purposes of this section, be deemed to be ratified by the Legislature of the unit if it is ratified by the majority of the Legislatures of the States in the group.

Explanation (2) : In this section, the expression “population” means the population as ascertained at the last preceding decennial census.

PART XIV—TRANSITIONAL PROVISIONS

233. (1) Subject to the other provisions of this Constitution, all the laws in force in the territories of the Federation immediately before the commencement of this Constitution shall continue in force therein until altered

Continuance in force of existing laws and their adaptations.

[Cf. Government of India Act, 1935, ss. 292 & 293.]

Federal Court to exercise the functions of the Supreme Court until the constitution of the Supreme Court.

Officers in the service of the Crown immediately before the commencement of this Constitution to continue in office after such commencement with certain exceptions. Provisions as to provisional Legislature and President and Council of Ministers for the Federation.

or repealed or amended by a competent legislature or other competent authority.

(2) The President may, by Order, provide that, as from such date as may be specified in the Order, any law in force in the Governors' Provinces or Chief Commissioners' Provinces or in any part of such Provinces shall, until repealed or amended by a competent legislature or other competent authority, have effect subject to such adaptations and modifications as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution.

234. (1) Until the Supreme Court is duly constituted under this Constitution, the Federal Court of the Dominion of India constituted under section 200 of the Government of India Act, 1935, as adapted under the provisions of the Indian Independence Act, 1947, shall exercise all the functions conferred by the provisions of this Constitution on the Supreme Court.

(2) On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territories of the Federation including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of, by the Supreme Court.

(3) Further provisions may be made by Federal law to give effect to the provisions of this section.

235. *Every person who, immediately before the date of commencement of this Constitution, was in the service of the Crown within the territories of the Federation shall continue in service until the Government of the Federation or of the unit, as the case may be, otherwise directs.*

Explanation: *For the purposes of this section, a Minister for the Dominion of India or for a Province shall not be deemed to have been in the service of the Crown.*

236. (1) *Until both Houses of the Federal Parliament have been duly constituted and summoned to meet for the first session under this Constitution, the Constituent Assembly of the Dominion of India shall itself exercise all the powers and perform all the duties conferred by the provisions of the Constitution on the Federal Parliament.*

Explanation: For the purposes of this sub-section, the Constituent Assembly of the Dominion of India includes members chosen to fill casual vacancies in that Assembly in accordance with rules made in that behalf by the Assembly, but shall not include any members representing any territory not included in the First Schedule to this Constitution.

(2) Such person as the Constituent Assembly of the Dominion of India shall have elected in this behalf shall be the provisional President of the Federation until a President has been elected in accordance with the provisions contained in Chapter I of Part IV of this Constitution and has entered upon his office.

237. (1) Until the House or Houses of the Legislature of each Province has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or Houses of the Legislature of that Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Provincial Legislature.

Provisions as to provisional Legislature and Governor in each Province.

(2) Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall after such commencement be the provisional Governor of such Province until a new Governor has been elected in accordance with the provisions of Chapter II of Part V of this Constitution and has entered upon his office.

237-A. For the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, the President may, by Order, direct that this Constitution shall, during such period as may be specified in the Order, have effect subject to such adaptations, whether by way of variation, addition, or repeal, as he may deem to be necessary or expedient. No such Order shall be made after the first meeting of the Federal Parliament duly constituted under Chapter II of Part IV of this Constitution.

Power of the President to remove difficulties.
[Cf. Government of India Act, 1935, s. 310.]

238. Until the expiration of three years from the commencement of this Constitution, the Federal Parliament may, notwithstanding anything contained in Part XIII, by Act amend this Constitution whether by way of variation, addition, or repeal.

Power to modify Constitution during first three years.
[Cf. Irish Constitution, Art. 51.]

PART XV—COMMENCEMENT AND REPEALS

Commencement. 239. This Constitution shall come into force on...

Repeals. 240. The Indian Independence Act, 1947 and the Government of India Act, 1935 including the India (Central Government and Legislature) Act, 1946 and all other enactments amending or supplementing the Government of India Act, 1935 are hereby repealed.

FIRST SCHEDULE

[Sections 2 and 3]

TERRITORIES OF FEDERATION

I. *Governors' Provinces :*

Madras,
Bombay,
West Bengal,
The United Provinces,
Bihar,
East Punjab,
The Central Provinces and Berar,
Assam,
Orissa.

II. *Chief Commissioners' Provinces :*

Delhi,
Ajmer-Merwara,
Coorg,
The Andaman and Nicobar Islands,
Panth Piploda.

III. *Indian States :*

[Here enumerate the Federated Indian States :

- (1) Single States.
- (2) Groups of States.]

SECOND SCHEDULE

[Sections 47(3), 56(5), 88, 106(2), 116(3), 119(8) and 165]

PART I—PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS
AND DEPUTY GOVERNORS OF PROVINCES

[Cf. Govern-
ment of India
Act, 1935,
Third Schedule,
and Govern-
ment of India
(Governors'
Allowances and
Privileges)
Order, 1936.]

1. There shall be paid to the President and to the Governors and the Deputy Governors of the Provinces the following emoluments per mensem, that is to say:

The President	.....rupees.
The Governor of a Province	.....rupees.
The Deputy Governor of a Province	.....rupees.

2. There shall be also paid to the President and to the Governors the following allowances per mensem during their respective terms of offices to enable them to discharge conveniently

and with dignity the duties of their respective offices, that is to say:

The President	.....rupees.
The Governor of a Province	.....rupees.

3. There shall be paid to the President, a Governor and a Deputy Governor an allowance equal to the actual expenses respectively incurred by them in travelling with their families, if any, and their and their families' effects, to take up the appointment of the President, Governor or Deputy Governor, as the case may be.

4. The President and each Governor throughout their respective terms of office shall be entitled without payment of rent or hire to the use of the official residences and of the railway saloons, river craft, air craft and motor cars provided for their respective use and no charge shall fall on them personally in respect of the maintenance thereof.

5. While the President or a Governor or a Deputy Governor is on leave, he shall in lieu of his salary be entitled to a leave allowance at the following rates, that is to say:

The President	.....rupees per mensem.
The Governor of a Province	.....rupees per mensem.
The Deputy Governor of a Province	.....rupees per mensem.

6. While the Vice-President is discharging the functions of the President, or a Deputy Governor is acting as Governor, he shall be entitled to the same emoluments as the President or the Governor for whom he acts, as the case may be, and during the period he so discharges the functions or acts, the provisions of paragraph 4 of this Schedule shall apply to him but the provisions of paragraphs 2, 3 and 5 thereof shall not apply to him.

PART II—PROVISIONS AS TO THE MINISTERS FOR THE FEDERATION

7. There shall be paid to the Prime Minister and to each of the other Ministers for the Federation the following salaries per mensem, that is to say:

The Prime Minister	.....rupees.
Each of the other Ministers	.....rupees.

PART III—PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURTS

8. There shall be paid to the judges of the Supreme Court and of each High Court in respect of time spent on actual service salary at the following rates per mensem, that is to say:

Chief Justice of the Supreme Court	.....rupees.
Any other judge of the Supreme Court	.....rupees.
Chief Justice of the High Court at Calcutta	.....rupees.
Chief Justices of High Courts of Madras, Bombay, Allahabad and Patna, and Chief Justice of the High Court of East Punjab	.....rupees.

[Cf. Government of India (Federal Court) Order, 1937, and the Government of India (High Court Judges) Order, 1937.]

Chief Justice of the High Court at Nagpur	.....rupees.
Any other judge of the High Court at Calcutta, Madras, Bombay, Allahabad, and Patna; any other judge of the High Court of East Punjab; Chief Judge of the Chief Court of Oudh	.....rupees.
Any other judge of the Chief Court of Oudh	.....rupees.
Any other judge of the High Court at Nagpur	.....rupees.

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Federation or any of its predecessor Governments or under the Government of a Province or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

9. The Chief Justice or any other judge of the Supreme Court or a Chief Justice or any other judge of a High Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territories of the Federation and shall be afforded such reasonable facilities in connection with travelling as the President in the case of the Chief Justice or any other judge of the Supreme Court, or the Governor of the Province in which the principal seat of the High Court is situate in the case of the Chief Justice or any other judge of such High Court, may from time to time prescribe.

10. (1) The rights in respect of leave of absence or pension of the Chief Justice or any other judge of the Supreme Court shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to any such judge of the Federal Court.

(2) The rights in respect of leave of absence or pension of the Chief Justice or any other judge of a High Court shall be governed or shall continue to be governed, as the case may be, by the same provisions which were applicable immediately before the commencement of this Constitution to any such judge of such High Court.

(3) For the purposes of this paragraph a person who was serving as acting judge or additional judge at the commencement of this Constitution shall be deemed to have been serving as a judge at that date if, but only if, his service as such acting judge or additional judge continued without interruption until his subsequent permanent appointment as a judge.

11. In this Part, unless the context otherwise requires,—

(a) the expressions "Chief Justice" and "Chief Judge" include respectively an acting Chief Justice and an acting Chief Judge, and a "judge" includes an *ad hoc* judge, an acting judge and an additional judge;

(b) "actual service" includes—

- (i) time spent by a judge on duty as a judge or in the performance of such other functions as he may be directed by the President or the Governor, as the case may be, or by the Commission appointed under section 224 of this Constitution to discharge;
- (ii) vacations, excluding any time during which the judge is absent on leave; and
- (iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.

PART IV—PROVISIONS AS TO THE AUDITOR-GENERAL OF THE FEDERATION

12. There shall be paid to the Auditor-General of the Federation (hereinafter referred to in this Part as "Auditor-General") a salary at the rate of...rupees per mensem.

13. The Auditor-General shall on his appointment give to the President an undertaking that he will not after he has ceased to hold his office accept any employment in the service of a local authority or railway company within the territories of the Federation or, save with the previous consent of the President, any other employment within the said territories.

14. The Auditor-General may, at any time, by writing under his hand addressed to the President resign his office.

15. (1) An Auditor-General who at the date of his appointment was a member of an All India Service shall vacate his office on completing thirty-five years' total service in that service and as Auditor-General :

Provided that, if at the date of his appointment he had completed thirty years' service or more, he may hold office for five years.

(2) Any other Auditor-General shall vacate his office on attaining the age of fifty-five years, or, if at the date of his appointment he had attained the age of fifty, after holding office for five years.

16. (1) An Auditor-General who at the date of his appointment was in the service of the Federation or of a Province may be granted leave during his tenure of office in accordance with the rules for the time being applicable to the service to which at the date of his appointment he belonged, his service as Auditor-General being treated for the purposes of those rules as continuing service counting for leave in the service to which he belonged.

(2) Any other Auditor-General may be granted leave on such terms and conditions as may be determined by the President.

17. The power to grant or refuse leave to the Auditor-General and to revoke or curtail leave granted to him shall be vested in the President.

18. (1) An Auditor-General who at the date of his appointment was in the service of the Federation or of any Province shall be eligible for such pension as may be admissible under the rules for the time being applicable to the service to which at the date of

[Cf. The Government of India (Audit and Accounts) Order, 1936, Paragraphs 3-9.]

his appointment he belonged, his service as Auditor-General being reckoned for the purposes of those rules as service for pension, including higher additional pension, on such terms and conditions as may be prescribed by or under those rules :

Provided that, if, when any such Auditor-General vacates his office, leave might have been granted to him pending retirement under the rules for the time being applicable to his former service if he had continued to be and still was a member thereof with a claim to further employment in a permanent post, his pension in respect of the period for which leave might have been so granted shall be an amount equal to the pay and allowances which would be payable to him if he were on leave from the office of Auditor-General, and his ultimate pension shall be computed as if the said period were a period of service as Auditor-General.

(2) Any other Auditor-General shall be eligible for such pension, if any, as may be determined by the President.

THIRD SCHEDULE

[Sections 48, 56(2), 66, 87(5), 117, 126(2), 139 and 164(5)]

FORMS OF DECLARATIONS

I

*Form of declaration to be made by the President or
any person acting as President*

[Cf. Gov-
ernment of
India Act,
1935, Fourth
Schedule and
Irish Constitu-
tion, Arts.
12(8), 34(5),
1°.]

"I, A.B., do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will dedicate myself to the service and welfare of India and her people and that I will discharge my duties faithfully and conscientiously in accordance with the Constitution and the law.

So help me God."

II

*Form of declaration to be made by a
Minister for the Federation*

"I, A.B., do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the Federation and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill-will.

So help me God."

III

*Form of declaration to be made by a member of
the Federal Parliament*

"I, A.B., having been elected (or nominated) a member of the Council of States (or the House of the People) do solemnly and sincerely promise and declare that I will bear true faith and

allegiance to the Constitution of India as by law established and do dedicate myself in all humility to the service of India and her people to the end that this ancient land attain her rightful and honoured place in the world and make her full and willing contribution to the promotion of world peace and welfare of mankind."

IV

*Form of declaration to be made by the judges of
the Supreme Court*

"I, A.B., having been appointed Chief Justice (or a judge) of the Supreme Court of India do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.
So help me God."

V

*Form of declaration to be made by the Governor of a Province
or any person acting as Governor*

"I, A.B., do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will dedicate myself to the service and welfare of the province of...and her people and that I will discharge my duties faithfully and conscientiously in accordance with the Constitution and the law.

So help me God."

VI

*Form of declaration to be made by a Minister
for a Province*

"I, A.B., do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the Province of...and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or ill-will.

So help me God."

VII

*Form of declaration to be made by a member of
the Provincial Legislature*

"I, A.B., having been elected (or nominated) a member of the Council (or Assembly), do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

VIII

*Form of declaration to be made by the
judges of a High Court*

"I, A.B., having been appointed Chief Justice (or a judge) of the High Court at (or of)...do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws.

So help me God."

FOURTH SCHEDULE

[Section 60]

PART I—COMPOSITION OF THE FEDERAL PARLIAMENT

General qualifications for membership

[Cf. Government of India Act, 1935, First Schedule, Part I, Paragraph 1.]

1. A person shall not be qualified to be chosen to fill a seat in the Federal Parliament unless he—

- (a) is a citizen of the Federation; and
- (b) is, in the case of a seat in the Council of States, not less than thirty-five years of age, and in the case of a seat in the House of the People, not less than twenty-five years of age; and
- (c) possesses such, if any, of the other qualifications specified in, or prescribed under, this Schedule as may be appropriate in his case.

2. Upon the expiration of the term for which he is chosen to serve as a member of the Federal Parliament, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

THE COUNCIL OF STATES

3. The allocation of seats allotted to representatives of units in the Council of States shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

4. (1) To each Governor's Province and to the Chief Commissioner's Province or Chief Commissioners' Provinces specified in the first column of the table showing seats allotted to representatives of Governors' and Chief Commissioners' Provinces, there shall be allotted the number of seats specified in the third column of the said table opposite to that Province or those Provinces, as the case may be.

(2) To each Indian State or, as the case may be, to each group of Indian States specified in the first column of the table showing seats allotted to representatives of Indian States, there shall be allotted the number of seats specified in the third column of the said table opposite to that State or to that group of States.

5. (1) Subject to the provisions of sub-paragraph (2), the representatives of each unit in the Council of States shall—

- (a) where the legislature of the unit has two Houses, be elected by the members of the lower House,
- (b) where the legislature of the unit has only one House, be elected by the members of that House, and
- (c) where the unit is an Indian State and there is no House of the Legislature in the unit, or where the unit consists of a group of Indian States and there is no House of the Legislature in all or any of those States, be nominated by the Government of the unit, or be nominated in rotation in the prescribed manner by the Governments of the States constituting the unit, as the case may be :

Provided that the Governments of two or more Indian States entitled to nominate in rotation a person or persons to fill a seat or seats in the Council of States allotted to a group of States may by agreement nominate jointly a person or persons to fill the said seat or seats.

Explanation : Where Indian States are grouped together for the purposes of returning representatives to the Council of States the entire group shall be deemed to be a single unit for the purposes of this paragraph.

(2) The two seats in the Council of States to be filled by the representatives of the Chief Commissioner's Province of Delhi and the other Chief Commissioners' Provinces shall be filled by persons nominated by the President.

(3) Each election of representatives of the units under sub-paragraph (1) shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

6. A person shall not be qualified to be chosen to fill a seat in the Council of States to be filled by the representative of any unit unless he is qualified to vote in the choice of a member to fill a seat in the House of the People to be filled by an election in any territorial constituency within such unit.

7. The number of seats in the Council of States to be filled by persons chosen from panels specified in the first column of the table below shall be as specified respectively in the second column of that table opposite to those panels:

1	2
Panels	Number of Seats
1. Cultural and Educational Panel	
2. Agricultural Panel	
3. Labour Panel	
4. Industrial and Commercial Panel	
5. Administrative Panel	

[Cf. Seanad Electoral (Panel Members) Act, 1937 (Irish Act No. 43 of 1937), Parts II and III.]

8. (1) Before the first general election to the Council of States there shall be prepared in the prescribed manner and in the prescribed form by such authority as may be appointed in this behalf by the Commission a register in which shall be included under separate parts the names of the bodies (hereinafter referred to as 'the constituent bodies') which are respectively entitled to nominate persons to the five panels of candidates to be constituted under sub-section (2) of section 60 of this Constitution.

(2) The following provisions shall apply and have effect in relation to the register of the constituent bodies, that is to say:

- (a) no body shall be eligible to be registered in the part of the register relating to any particular panel unless its objects and activities relate to or are connected with or it is representative of persons engaged in one or more of the interests and services mentioned in sub-section (2) of section 60 of this Constitution in respect of that particular panel;
 - (b) no body which is formed or carried on wholly or substantially for profit or which carries on, as its sole or principal function, any trade or business for profit shall be eligible for registration in the said register;
 - (c) no body which is composed wholly or mainly of persons who are employed under the Federation or under any unit or of persons who are employed under any local authority and the objects of which include the advancement or protection of the interests of such persons in relation to their said employment shall be eligible for registration in the said register;
 - (d) every body which is registered in the said register shall be so registered in respect of one, and only one, panel;
 - (e) no body shall be registered in the said register save in pursuance of an application in that behalf made by such body in the prescribed manner;
 - (f) the number of constituent bodies registered in the said register in respect of any particular panel shall be so limited that the full number of persons who may be nominated to such panel by constituent bodies shall not exceed thirty.
- (3) After the register of constituent bodies has been prepared under this paragraph, it shall be published in the Official Gazette of the Federation and shall on such publication be final and conclusive and shall be in force for the first and every subsequent election to the Council of States subject only to such annual revision as is provided for in this Part of this Schedule.

9. (1) The register of constituent bodies prepared and published under paragraph 8 shall be revised annually by such authority as may be appointed in this behalf by the Commission in the prescribed manner and the provisions of this Part of this Schedule applicable to the preparation of the said register shall apply to such revision of the register.

(2) As soon as any annual revision of the register of constituent bodies has been completed under sub-paragraph (1) the register so revised at such annual revision shall be published by the Commission in the Official Gazette of the Federation and on

such publication the register so revised shall be conclusive evidence of the alterations made in the said register at such annual revision.

10. (1) Every constituent body which is registered in the register of constituent bodies in respect of any particular panel shall be entitled to nominate to such panel such number of persons as is provided hereinafter in this paragraph.

(2) The several constituent bodies entitled to nominate persons to a particular panel shall each be entitled to nominate the same number of persons to such panel and that number shall be ascertained as follows, that is to say:

(a) if the number of constituent bodies entitled to nominate persons to such panel is not less than the number of members to be elected to the Council of States from persons nominated to such panel by constituent bodies, each such constituent body shall be entitled to nominate two persons to such panel;

(b) if the number of constituent bodies entitled to nominate as aforesaid is not less than one-half but is less than the whole of the number of members to be elected to the Council of States as aforesaid, each such constituent body shall be entitled to nominate four persons to such panel;

(c) if the number of constituent bodies entitled to nominate as aforesaid exceeds one, but is less than one-half of the number of members to be elected to the Council of States as aforesaid, each such constituent body shall be entitled to nominate eight persons to such panel;

(d) if only one constituent body is entitled to nominate as aforesaid, such constituent body shall be entitled to nominate to such panel a number of persons equal to twice the number of members to be elected to the Council of States as aforesaid.

11. (1) No person shall be nominated as aforesaid to any particular panel unless he is a person having knowledge or practical experience of one or more of the interests or services specified in sub-section (2) of section 60 of this Constitution in respect of that particular panel.

(2) No person shall be nominated as aforesaid if he is not qualified to be chosen to fill a seat in the Council of States under paragraph 1 of this Part of this Schedule.

(3) No person shall be nominated as aforesaid to more than one panel.

12. (1) Before the first general election and thereafter before each biennial election to the Council of States under sub-section (9) of section 60 of this Constitution each constituent body entitled to nominate persons to a particular panel shall be invited by the Returning Officer in the prescribed manner to nominate within such time as may be fixed in this behalf by the Commission the persons which it is entitled so to nominate.

(2) All nominations to a panel by constituent bodies shall be made in the prescribed manner on nomination papers in the prescribed form.

(3) Where a constituent body purports to nominate by a

nomination paper either more persons or less persons to a panel than such constituent body is entitled so to nominate, such nomination paper shall be wholly void.

13. (1) After the expiration of the time fixed for nominations to panels by constituent bodies the nominations made shall be scrutinised by the Returning Officer in the prescribed manner on the date or dates fixed in that behalf by the Commission.

(2) If, on the scrutiny of the nominations, any person is found to be entered in two or more panels, the following provisions shall have effect, that is to say:

- (a) the Returning Officer shall retain the name of such person on such one of those panels as such person or his agent shall elect;
- (b) if such person or his agent, as the case may be, refuses or fails to make such election or neither such person nor his agent is present or reasonably available, the Returning Officer shall retain the name of such person on such one of the panels as the Returning Officer shall determine by lot;
- (c) the Returning Officer shall delete the name of such person from all the panels except the one on which he is required under clause (a) or clause (b) of this sub-paragraph to retain the name of such person.

14. (1) After the completion of the scrutiny of the nominations the Returning Officer shall prepare in the prescribed manner a list of the panels containing the names of all persons validly nominated to each such panel.

(2) If, when all the panels have been so prepared, the number of persons whose names are entered in any panel is not at least twice the number of members to be elected to the Council of States from persons nominated to such panel, the Returning Officer shall adjourn to a convenient day and hour the further proceedings with regard to the completion of the panels and shall forthwith report to the President the said deficiency in the said panel and forward to the President at the same time a list of the panels containing the names of persons validly nominated to each such panel prepared by him under sub-paragraph (1) of this paragraph.

15. Upon receiving such report the President shall nominate to every panel in respect of which he receives a report such number of persons as will be sufficient to bring the number of persons on such panel up to a number equal to twice the number of members to be elected to the Council of States from persons nominated to such panel, and shall cause the said nominations to be forwarded to the Returning Officer for inclusion in the panels concerned.

16. On receipt of the nominations from the President the Returning Officer shall complete the preparation of the panels in the prescribed manner and the panels of candidates so prepared shall then be published in the Official Gazette of the Federation, and on such publication shall be final and conclusive and shall not, otherwise than in any election inquiry held under this Schedule, be called in question.

17. All decisions by the Returning Officer arising out of or

relating to the preparation and completion of the panels shall be final and conclusive and shall not, otherwise than in any election inquiry held under this Schedule, be called in question.

18. The members to be elected to the Council of States from the panels of candidates so constituted shall be elected by the members of the House of the People in accordance with the system of proportional representation by means of the single transferable vote and the voting at every such election shall be by secret ballot.

19. (1) The term of office of a member of the Council of States, other than a member chosen to fill a casual vacancy, shall be six years :

Provided that the term of office of a member nominated to fill a seat in the Council of States by the Government of an Indian State nominating in rotation, shall be one year :

Provided further that upon the first constitution of the Council of States, the President shall make, by Order, such provision as he thinks fit, by curtailing the term of office of some of the members then chosen, for securing that, as nearly as may be, one-third of the members holding seats of each class shall retire in every second year thereafter.

Explanation : For the purposes of this sub-paragraph seats to be filled by representatives of each Governor's Province, seats to be filled by representatives of the Chief Commissioner's Province of Delhi and of other Chief Commissioners' Provinces, seats to be filled by representatives of Indian States or groups of Indian States and seats to be filled by persons chosen from panels constituted under sub-section (2) of section 60 of this Constitution shall be deemed to be seats of different classes.

(2) A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

THE HOUSE OF THE PEOPLE

20. The allocation of seats in the House of the People shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

21. (1) To each Governor's Province and to each Chief Commissioner's Province or to the Chief Commissioners' Provinces specified in the first column of the table showing seats allotted to representatives of Governors' and Chief Commissioners' Provinces, there shall be allotted the number of seats specified in the third column opposite to that Province or those Provinces, as the case may be, and of those seats the numbers, if any, specified in the fifth, seventh, ninth and eleventh columns shall be the numbers of seats reserved respectively for—

- (i) the Muslim community,
- (ii) the members of the Scheduled Castes,
- (iii) the Scheduled Tribes, and
- (iv) the Indian Christian community.

(2) To each Indian State, or as the case may be, to each group of Indian States specified in the first column of the table showing

seats allotted to representatives of Indian States, there shall be allotted the number of seats specified in the third column of the said table opposite to that State or to that group of States.

22. In delimiting territorial constituencies for the purpose of election to seats in the House of the People to be filled by representatives of the Province of Assam, there shall be formed a constituency comprising only the autonomous districts in that Province and one seat shall be allotted to the said constituency which shall be a seat reserved for the Scheduled Tribes in that Province.

23. A person shall not be qualified to be chosen to fill a seat in the House of the People, unless—

- (a) in the case of a seat reserved for a member of the Muslim community, a member of the Scheduled Castes, a member of the Scheduled Tribes, and a member of the Indian Christian community, and to which the provisions of clause (b) of this paragraph do not apply, he is respectively a Muslim, a member of the Scheduled Castes, a member of the Scheduled Tribes and an Indian Christian, and he is entitled to vote in the choice of a member to fill that seat or any other seat in the House of the People;
- (b) in the case of the seat to be filled in the constituency formed under paragraph 22, he is a member of the Scheduled Tribes in such constituency and is entitled to vote in the choice of a member to fill that seat;
- (c) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat in the House of the People.

TABLE OF SEATS

THE COUNCIL OF STATES

Representatives of Governors' and Chief Commissioners' Provinces

1	2	3
Province	Population	Total seats
Madras	49,341,810	25
Bombay	20,849,840	13
West Bengal	21,211,427	13
United Provinces	55,020,617	25
East Punjab	12,617,175	9
Bihar	36,340,151	21
Central Provinces and Berar	16,813,584	11
Assam	7,471,531	6
Orissa	8,728,544	7
Delhi	917,939	1
Ajmer-Merwara, Coorg, Panth Piploda and Andaman and Nicobar Islands.	791,454	1
TOTAL	230,104,072	132

Representatives of Indian States

DIVISION I—STATES

1	2	3
States	Population	Total seats
Hyderabad	16,338,534	11
Mysore	7,329,140	6
Travancore	6,070,018	6
Kashmir	4,021,616	4
Gwalior	4,006,159	4
Jaipur	3,040,876	3
Baroda	2,855,010	3
Jodhpur	2,555,904	3
Patiala	1,936,259	2
Udaipur	1,926,698	2
Rewa	1,820,445	2
Indore	1,513,966	2
Cochin	1,422,875	1
Bikaner	1,292,938	1
Kolhapur	1,092,046	1
TOTAL SEATS .		51

DIVISION II—GROUPS OF STATES

1	2	3
Groups of States	Population	Total seats
TOTAL SEATS		

TABLE OF SEATS

THE HOUSE OF THE PEOPLE

Representatives of Governors' and Chief Commissioners' Provinces

Province	1	2	3	4	5	6	7	8	9	10	11
		Total Population	Total seats	Population of Muslims	Seats reserved for Muslims	Population for Scheduled Castes	Seats reserved for Scheduled Castes	Population of Scheduled Tribes	Seats reserved for Scheduled Tribes	Population of Indian Christians	Seats reserved for Indian Christians
Madras		49,341,810	79	3,896,452	6	8,068,492	13	562,029	1	2,001,082	3
Bombay		20,849,840	33	1,920,368	3	1,855,148	3	1,614,298	3	338,812	1
West Bengal		21,211,427	34	5,331,799	9	3,311,241	5	1,356,268	2	60,222	..
United Provinces		55,020,617	88	8,416,308	13	11,717,158	19	289,422	..	131,327	..
East Punjab		12,617,175	20	4,412,414	7	1,014,756	2	..	..	115,696	..
Bihar		36,340,151	58	4,716,314	8	4,340,379	7	5,055,647	8	24,693	..
Central Provinces and Berar		16,813,584	27	783,697	1	3,051,413	5	2,937,364	5	48,260	..
Assam		7,471,531	12	1,751,717	3	377,025	1	1,700,000 (approx- imately).	3	35,483	..
Orissa		8,728,544	14	146,301	..	1,238,171	2	1,721,006	3	26,584	..
Delhi		917,939	2	304,971	..	122,693	..	..	..	10,494	..
Ajmer-Merwara and Piploda		588,960	1	90,150	..	981	..	91,484	..	4,111	..
Coorg		168,726	1	14,730	..	25,740	..	19,723	..	3,309	..
Andaman and Nicobar Islands		33,768	1	8,005	..	..	..	11,076	..	1,032	..
TOTAL		230,104,072	370	31,793,226	50	35,123,197	57	16,079,285	25	2,802,993	4

Of the seats in the Province of Assam reserved for Scheduled Tribes, one seat shall be allotted to the constituency formed in that Province comprising only the autonomous districts in that Province.

Representatives of Indian States

DIVISION I

1	2	3
States	Population	Total seats
Hyderabad	16,338,534	26
Mysore	7,329,140	12
Travancore	6,070,018	10
Kashmir	4,021,616	6
Gwalior	4,006,159	6
Jaipur	3,040,876	5
Baroda	2,855,010	5
Jodhpur	2,555,904	4
Patiala	1,936,259	3
Udaipur	1,926,698	3
Rewa	1,820,445	3
Indore	1,513,966	2
Cochin	1,422,875	2
Bikaner	1,292,938	2
Kolhapur	1,092,046	2
TOTAL SEATS		91

DIVISION II

1	2	3
States	Population	Total seats
Mayurbhanj	990,977	1
Alwar	823,055	1
Bhopal	785,322	1
Kotah	777,398	1
Tehri-Garhwal	397,369	1
Bharatpur	575,625	1
Cutch	500,800	1
Benares	451,428	1
Rampur	477,042	1
Pudukkottai	438,348	1
Cooch-Behar	640,842	1
Bastar	633,888	1
Patna	632,220	1
Kalahandi	597,940	1
Surguja	551,752	1
Keonjhar	529,786	1
Bhavnagar	618,429	1
Nawanagar	504,006	1
Tripura	513,010	1
Manipur	512,069	1
TOTAL SEATS		20

FRAMING OF INDIA'S CONSTITUTION

DIVISION III

1	2	3
Groups of States	Population	Total seats
TOTAL SEATS		

PART II—PROVISIONS AS TO FRANCHISE

24. There shall be an electoral roll for every territorial constituency and no person who is not, and, except as expressly provided by this Part of this Schedule, every person who is for the time being included in the electoral roll for any such constituency shall be entitled to vote in that constituency.

25. The electoral rolls for the territorial constituencies shall be made up and from time to time in whole or in part revised by reference to such date in this Part of this Schedule referred to as "the prescribed date" as may be directed in each case by the President.

26. Every person who is not less than twenty-one years of age and is not subject to any of the disqualifications hereinafter set out shall be entitled to be included in the electoral roll for a territorial constituency.

27. No person shall be included in the electoral roll for any territorial constituency unless he is a citizen of the Federation.

28. No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency if he is of unsound mind and stands so declared by a competent court.

29. No person shall, at a general election for the House of the People or at the first general election or at any subsequent biennial election under sub-section (9) of section 60 of this Constitution for the Council of States, vote in more than one territorial constituency and such provisions, if any, as may be prescribed, shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency, and if a person votes in more than one constituency in contravention of this paragraph, his votes in each of the constituencies shall be void.

30. No person shall be included in the electoral roll for, or vote at any election in, a territorial constituency, if he is for the time being disqualified from voting under the provisions of this Schedule or under any such Act of the Federal Parliament or rules made by the President as may be passed or made under this Constitution with respect to corrupt practices and other offences in connection with elections and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies in which it may be included.

31. No person shall vote at any election in any territorial constituency, if he is for the time being undergoing a sentence of transportation, penal servitude or imprisonment.

32. (1) A person shall not be qualified to be included in the electoral roll for any territorial constituency unless he has a place of residence in that constituency and has resided in such place for a period of not less than 180 days in the previous financial year.

(2) For the purposes of this paragraph a person shall be deemed to reside in a place if he sometimes uses it as a sleeping place and a person shall not be deemed to cease to reside in a place merely because he is absent from it or has another

[Cf. The Government of India Act, 1935, Sixth Schedule, Part I; the Government of India (Provincial Legislative Assemblies) Order, 1936, Part I, and the Government of India (Provincial Legislative Councils) Order, 1936, Part I.]

dwelling in which he resides if he is at liberty to return to the place at any time and has not abandoned his intention of returning.

33. In a territorial constituency in which seats are reserved for the Muslim community, members of the Scheduled Castes, members of the Scheduled Tribes or the Indian Christian community, a Muslim, a member of the Scheduled Castes, a member of the Scheduled Tribes or an Indian Christian shall not be disqualified to hold a seat not so reserved.

34. Where at an election in a territorial constituency a poll is taken for the purpose of filling more than one seat, a voter shall have as many votes as there are seats to be filled on the poll, but shall not be entitled to give more than one vote to any one candidate.

35. (1) The provisions of this paragraph shall apply in relation to any election in a territorial constituency where the seats to be filled include a seat or seats reserved for the Muslim community, or members of the Scheduled Castes, or the Scheduled Tribes, or the Indian Christian community.

(2) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is equal to the number of seats so reserved, all those candidates shall be declared to be elected to fill the reserved seat or reserved seats and a poll shall only be taken, if necessary, for filling any seat or seats not filled under this sub-paragraph.

(3) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is greater than the number of seats so reserved, then, when the counting of the votes has been completed, the Returning Officer shall first declare that one, or those, of the qualified candidates to whom the largest number of votes has been given to be elected to fill the reserved seat or the reserved seats.

(4) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is less than the number of seats so reserved, all those candidates, if any, shall be declared to be elected to fill seats so reserved, and the President shall by public notification call on the constituency to elect a person or persons, as the case may be, within such time as may be specified in the notification :

Provided that where a constituency having been already so called upon has failed to elect a person, or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the President shall not be bound again to call upon the constituency to elect a person or persons to fill the vacancy or vacancies until such time as he may think fit.

36. If, when a poll has been taken at any election, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be given by the Returning Officer to the candidate, or as the case may be, the candidates, selected by lot drawn in the presence of the Returning Officer in such manner as he may determine.

37. (1) The fact that a person has in relation to any constituency more than one qualification to be included in the electoral

roll therefor shall not increase his rights as respects inclusion in that roll.

(2) No person shall be entitled to be included twice in the electoral roll for any particular constituency and the fact that a person is included twice in the electoral roll for a constituency shall not increase his rights as respects voting therein.

38. If a person is elected to more than one seat in the House of the People or in the Council of States, then, unless within the prescribed time he resigns all but one of the seats, all those seats in that House or Council, as the case may be, shall become vacant.

39. (1) The dates on which nominations are to be made and scrutinised, polls held and other acts done in connection with elections to either House of the Federal Parliament shall be fixed by the Commission.

(2) Nothing in this paragraph shall be construed as preventing Acts of the Federal Parliament or rules from making general provision with respect to the intervals which are to elapse between the successive stages of an election.

40. (1) In all territorial constituencies the electoral rolls shall be prepared by such authority as the Commission shall appoint :

Provided that in the preparation of such rolls, the authority so appointed may, subject to any prescribed restrictions, employ such persons as he thinks fit.

(2) In all territorial constituencies and at all elections the Returning Officer shall be a person either serving in connection with the affairs of the Federation or of any unit.

41. At any election by the members of the House of the People or of the Legislature of any unit to fill seats in the Council of States, the Returning Officer shall be nominated by the Commission, and nominations shall be made and scrutinised, polls held, and other acts done in connection with the election to, by, or before the Returning Officer, or persons who are under his control or have been placed thereunder for the purpose of the election.

PART III—DELIMITATION OF TERRITORIAL CONSTITUENCIES

42. (1) The territorial constituencies for the election of persons to fill seats in the House of the People to be filled by representatives of the people in the Governors' Provinces and Chief Commissioners' Provinces and in Indian States shall be those specified in the first column of the relevant tables appended to this Part of this Schedule, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) Of the total number of seats to be filled in each constituency the number of seats, if any, specified in the fourth, fifth, sixth and seventh columns of the table shall respectively be reserved for the Muslim community, members of the Scheduled Castes, members of the Scheduled Tribes and the Indian Christian community.

43. The President may at any time by order vary the name of any territorial constituency if he deems it expedient so to do.

FRAMING OF INDIA'S CONSTITUTION

TERRITORIAL CONSTITUENCIES

Governors' and Chief Commissioners' Provinces

I—MADRAS

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

II—BOMBAY

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

III—WEST BENGAL

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

IV—THE UNITED PROVINCES

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

V—EAST PUNJAB

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

VI—BIHAR

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

VII—CENTRAL PROVINCES & BERAR

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

VIII—ASSAM

Autonomous Districts' Constituency

Name of Constituency	Extent of Constituency	Number of seats

Other Territorial Constituencies

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

IX—ORISSA

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

X—DELHI

Name of Constituency	Extent of Constituency	Number of seats

XI—AJMER-MERWARA AND PANTH PIPLODA

Name of Constituency	Extent of Constituency	Number of seats

XII—COORG

Name of Constituency	Extent of Constituency	Number of seats

TERRITORIAL CONSTITUENCIES

Indian States

Name of Constituency	Extent of Constituency	Number of seats

PART IV—ELECTION AGENTS AND EXPENSES

[Cf. The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, Part II.]

44. Every person nominated as a candidate at an election shall at the prescribed date and in the prescribed manner appoint either himself or some one other person to be his election agent.

45. No person shall be appointed an election agent who is disqualified from being an election agent under the provisions of this Schedule.

46. (1) Any revocation of the appointment of an election agent, whether he be the candidate himself or not, shall be signed by the candidate, and shall operate from the date on which it is lodged with the Returning Officer.

(2) In the event of such a revocation or of the death of an election agent, whether that event occurs before or during the election, or after the election but before a return of the candidate's election expenses has been lodged in accordance with the provisions of paragraph 48 of this Schedule, the candidate shall appoint forthwith either himself or some other person to be his election agent, and shall give notice in writing of the appointment to the Returning Officer.

47. Every election agent shall, for each election for which he is appointed election agent, keep separate and regular books of account, and shall enter therein such particulars of expenditure in connection with the election as may be prescribed.

48. (1) Within the prescribed time after every election, there shall be lodged with the Returning Officer, in respect of each person who has been nominated as a candidate, a return of the election expenses of that person signed both by him and his election agent.

(2) Every such return shall be in such form and shall contain such particulars as may be prescribed and shall be accompanied by declarations in the prescribed form by the candidate and his election agent, made on oath or solemn affirmation before a magistrate.

(3) Notwithstanding anything in this paragraph, where a candidate is owing to absence from India unable to sign the return of election expenses and to make the required declaration, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent only and the candidate shall within fourteen days after his return to India cause to be lodged with the Returning Officer a declaration made on oath or solemn declaration before a Magistrate in such form as may be prescribed.

49. Provision shall be made by an Act of the Federal Parliament or by rules fixing the maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with elections :

Provided that no provision need be so made with respect to any election held before the expiration of two years from the commencement of this Constitution.

50. Except as far as may be prescribed, this Part of this Schedule shall not apply to an election by the members of the House of the People or by the members of the Legislature of a unit to fill seats in the Council of States.

PART V—DECISION OF DOUBTS AND DISPUTES AS TO THE VALIDITY OF
AN ELECTION AND DISQUALIFICATIONS FOR CORRUPT PRACTICES

51. In this Part of this Schedule, except where it is otherwise expressly provided or the context otherwise requires,—

- (a) 'agent' includes an election agent and any person who, on the trial of an election petition, is held by the tribunal to have acted as an agent in connection with the election with the knowledge or consent of the candidate;
- (b) 'candidate' means a person who has been or claims to have been duly nominated as a candidate at an election, and a candidate who, with the election in prospect, has held himself out as a prospective candidate, shall be deemed to have been a candidate as from the time when he began so to hold himself out;
- (c) 'corrupt practice' in relation to an election by the members of the House of the People or by the members of the Legislature of a unit to fill seats in the Council of States, means one of the practices specified in Parts I and II of the Twelfth Schedule to this Constitution, and in relation to any other election, means one of the practices specified in Parts I, II and III of that Schedule;
- (d) 'electoral right' means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election;
- (e) 'returned candidate' means a candidate whose name has been published in the prescribed manner as duly elected.

52. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part of this Schedule.

53. (1) An election petition against any returned candidate may be presented to the President,—

- (a) by any candidate or elector on any ground;
- (b) by an officer empowered in that behalf by the President, on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed.

(2) A petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself has been duly elected, but such a declaration shall only be claimed on one or other of the following grounds—

- (a) that in fact the petitioner received a majority of the valid votes; or
- (b) that but for votes obtained for the returned candidate by corrupt practices, the petitioner would have obtained a majority of the valid votes.

54. (1) Unless the President dismisses a petition for non-compliance with the prescribed requirements, he shall forward the same to the Commission who shall appoint as members of a tribunal for the trial of the petition three persons who are or have been or are eligible to be appointed judges of a High Court, and shall appoint one of them to be the Chairman :

Provided that nothing in this sub-paragraph shall be deemed

[Cf. The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, Part III.]

to prevent the appointment of the Chairman of a tribunal before the other members are appointed.

(2) Subject to the provisions of this paragraph, all applications and proceedings in connection with the petition shall be dealt with by, and carried on by or before, the tribunal.

(3) Where in respect of any election in a constituency more petitions than one are presented, the Commission shall on receipt of such petitions from the President refer all those petitions to the same tribunal and the tribunal may at its discretion inquire into the petitions either separately or in one or more groups as it thinks fit.

(4) If the services of any member of the tribunal are not available for the purposes of the inquiry or if during the course of the inquiry any member is unable to continue to attend thereat, the Commission shall appoint another member and the inquiry shall recommence before the tribunal as so reconstituted :

Provided that the tribunal may direct that any evidence already recorded shall remain upon record, and in that case it shall not be necessary to re-examine those witnesses who have already been examined and discharged.

(5) References to the tribunal in this Part of this Schedule shall, as respects any matter to be done before the commencement of the inquiry, be deemed to be references to the Chairman.

55. When at an inquiry into an election petition the tribunal so orders, the Advocate-General of the Federation, or some person acting under his instructions shall attend and shall take such part therein as the tribunal may direct.

56. Subject to the provisions of this Part of this Schedule, Acts of the Federal Parliament and rules may regulate the form of election petitions, the time and manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, may require security to be given for costs and may authorise the President to dismiss petitions for non-compliance with the prescribed requirements.

57. (1) Subject to the provisions of this paragraph if in the opinion of the members of the tribunal—

(a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected by any corrupt practice; or

(b) any corrupt practice specified in Part I of the Twelfth Schedule to this Constitution has been committed in the interests of a returned candidate; or

(c) the result of the election has been materially affected by the improper acceptance or rejection of any nomination, or by reason of the fact that any person nominated was not qualified or was disqualified for election, or by the improper reception or refusal of a vote, or by the reception of any vote which is void, or by any non-compliance with the provisions of this Constitution or of any Act of the Federal Parliament or rules relating to the election, or by any mistake in the use of any prescribed form; or

- (d) the election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed;

the election of the returned candidate shall be void.

(2) If the tribunal reports that a returned candidate has been guilty by an agent other than an election agent, of any corrupt practice specified in Part I of the Twelfth Schedule to this Constitution, but further reports that the candidate has satisfied the tribunal that—

- (a) no corrupt practice was committed at the election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders, and without the sanction or connivance, of the candidate or his election agent;

- (b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election;

- (c) the corrupt practices mentioned in the report were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election; and

- (d) in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the tribunal may find that the election of the candidate is not void.

(3) If a person (not being entitled so to do) votes more than once at the same election, all his votes shall be deemed for the purposes of this paragraph to be void.

58. (1) At the conclusion of the inquiry the tribunal shall report whether the returned candidate, or any person who has lodged a petition and claimed a seat, has been duly elected and in so reporting shall have regard to the provisions of the last preceding paragraph.

(2) The report shall further include a recommendation by the tribunal as to the total amount of costs which are payable and the persons by and to whom costs shall be paid, and any such recommendation may include a recommendation for the payment of costs to the Advocate-General of the Federation or a person acting under his instructions attending the trial in pursuance of an order of the tribunal.

(3) The report shall be signed by all the members of the tribunal and the tribunal shall forward the report to the Commission who shall forthwith submit it to the President, and the President on receipt thereof shall issue orders in accordance with the report and publish the report in the Official Gazette of the Federation, and the orders of the President shall be final.

59. If either in the report of the tribunal or upon any other matter there is a difference of opinion among the members of the tribunal the opinion of the majority shall prevail and the report of the tribunal shall be expressed in terms of the views of the majority.

60. Where any charge is made in an election petition of any corrupt practice, the tribunal shall record in its report—

- (a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent, or with the connivance of any candidate or his agent, and the nature of that corrupt practice; and
- (b) the names of all persons, if any, who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of that practice with any such recommendations as the tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under paragraphs 63 to 65 of this Schedule :

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

61. The provisions of this Part shall, when so prescribed, apply to the decision of doubts and disputes arising out of or in connection with the nomination of any person by the Government of an Indian State with such exceptions and subject to such adaptations and modifications as may be prescribed.

PART VI—DISQUALIFICATIONS

[Cf. The Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, Part IV.]

62. The offences and practices specified, in relation to certain elections, in the Thirteenth Schedule to this Constitution shall, for the periods respectively specified in relation to those offences and practices in that Schedule, entail disqualification for membership of either House of the Federal Parliament.

63. If any person—

(a) is, in connection with an election to the Federal Parliament, the Coorg Legislative Council or a local body within a Governor's or Chief Commissioner's Province, convicted of an offence under Chapter IXA of the Indian Penal Code punishable with imprisonment for a term exceeding six months, or

(b) is after an inquiry under Part V of this Schedule reported as guilty of any such corrupt practice as is specified in

Part I or Part II of the Twelfth Schedule to this Constitution, he shall, for a period of six years from the date of the conviction or report, be disqualified for voting at any election.

64. If, in relation to any election (other than an election by the members of the House of the People or the Legislature of any unit to fill seats in the Council of States), any person is after such an inquiry as aforesaid reported as guilty of any such corrupt practice as is specified in Part III of the Twelfth Schedule to this Constitution, he shall be disqualified for voting at any election for a period of four years from the date of the report.

65. If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which Part IV of this Schedule applies, or if such a return is found, either by a tribunal holding an inquiry

into the election or by any court in a judicial proceeding, to be false in any material particular, the candidate and his election agent shall be disqualified for voting at any election for a period of five years from the date by which the return was required to be lodged.

66. Every person shall be disqualified for voting at any election who is for the time being disqualified for voting at elections to a Provincial Legislature by reason of misconduct in connection with an election to that Legislature, or by reason of default in making, or of the falsity of, any return of election expenses at any election to that Legislature.

67. Any person who is for the time being disqualified under the foregoing provisions of this Part of this Schedule for being a member of either House of the Federal Parliament or for voting at elections, shall, so long as the disqualification exists, also be disqualified for being an election agent at any election.

68. Any disqualification under paragraph 63 of this Schedule arising in connection with an election to the Legislature of, or to a local body in, a Province may be removed by the Governor of that Province and any other disqualification under the said paragraph 63 and any disqualification under paragraphs 64 and 65 of this Schedule may be removed by the President.

69. In paragraph 62 of this Schedule, "elections" includes all the elections referred to in the Thirteenth Schedule to this Constitution, but save as aforesaid the references in this Part of this Schedule to elections, other than express references to elections of any other kind, shall be construed as references to elections as defined in paragraph 70 of this Schedule.

PART VII—GENERAL

70. (1) In this Schedule, except where the context otherwise requires,—

- (a) 'Commission' means the Commission appointed by the President under Section 224 of this Constitution;
- (b) 'election' means an election to fill a seat or seats in either House of the Federal Parliament;
- (c) 'panel' means a panel of candidates formed under subsection (2) of section 60 of this Constitution;
- (d) 'person' does not include a body of persons;
- (e) 'preparation' in relation to any electoral roll includes the revision thereof and 'prepare' shall be construed accordingly;
- (f) 'prescribed', except in the phrase "the prescribed date", means prescribed by an Act of the Federal Parliament or by a rule made under paragraph 71 of this Schedule;
- (g) 'previous financial year' means the financial year immediately preceding that in which the prescribed date falls;
- (h) 'rules' means rules made under paragraph 71 of this Schedule;
- (i) 'sign' in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed;

- (j) 'territorial constituency' means one of the territorial constituencies mentioned in the table appended to Part III of this Schedule;
 - (k) 'the cultural and educational panel' means the panel required by sub-section (2) of section 60 of this Constitution to contain the names of persons having knowledge or practical experience of the following interests and services, namely, the national language and culture, literature, art, education and such professional interests as may be defined by Act of the Federal Parliament for the purpose of this panel;
 - (l) 'the agricultural panel' means the panel required by sub-section (2) of the said section 60 to contain the names of persons having knowledge or practical experience of agriculture and allied interests;
 - (m) 'the labour panel' means the panel required by sub-section (2) of the said section 60 to contain the names of persons having knowledge or practical experience of labour;
 - (n) 'the industrial and commercial panel' means the panel required by sub-section (2) of the said section 60 to contain the names of persons having knowledge or practical experience of the following interests and services, namely, industry and commerce including banking, finance, accountancy, engineering and architecture;
 - (o) 'the administrative panel' means the panel required by sub-section (2) of the said section 60 to contain the names of persons having knowledge or practical experience of public administration and social services.
- (2) The provisions of Part V of this Schedule shall, in relation to elections held to fill seats in the Council of States to be filled by persons chosen from panels of candidates constituted under sub-section (2) of section 60 of this Constitution, have effect with such exceptions and subject to such adaptations and modifications as may be prescribed, but subject as aforesaid, the nominations to, and all acts done in connection with the preparation of, any panel shall be deemed to form part of the election held to fill a seat or seats in the Council of States to be filled by a person or persons chosen from such panel.
- (3) Any reference in this Schedule to any of the provisions of any Indian Act shall be construed as a reference to those provisions as amended by, or under, any other law or, if those provisions are repealed and re-enacted with or without modification, to the provisions so re-enacted.
- (4) If the boundaries of any district or other administrative area mentioned in this Schedule or in the Tenth Schedule to this Constitution are altered, any reference in this Schedule or in the said Schedule to that district or area shall, as from such date or dates as may be fixed by the President either for all purposes or for any particular purposes of this Schedule, be taken as a reference to the district or area so altered.
- (5) Where under any of the provisions of this Schedule anything is to be prescribed, different provisions may be made for different cases or classes of cases.

71. In so far as provision with respect to any matter is not made in this Schedule or by an Act of the Federal Parliament, the President may make rules for carrying into effect the foregoing provisions of this Schedule and securing the due constitution of the Federal Parliament and in particular, but without prejudice to the generality of the foregoing words, with respect to—

[Cf. Government of India Act, 1935, First Schedule, Part I, Paragraph 27 and Part II, Paragraph 14, and Fifth Schedule, Paragraph 20.]

- (a) the notification of vacancies including casual vacancies and, subject to the provisions of sub-section (4) of section 60 of this Constitution, the proceedings to be taken for filling vacancies;
- (b) the nomination of candidates;
- (c) the preparation, publication and revision of the register of constituent bodies, the nomination of persons by such bodies to the panel of candidates to be formed under sub-section (2) of section 60 of this Constitution and the preparation and publication are to take effect;
- (d) the conduct of elections including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats are reserved for the Muslim community, members of the Scheduled Castes, members of the Scheduled Tribes, or the Indian Christian community;
- (e) the order in which Governments of Indian States entitled to make nominations in rotation are to make them and the date from which such nomination of such panels;
- (f) the expenses of candidates at elections;
- (g) corrupt practices and other offences at or in connection with elections;
- (h) the decision of doubts and disputes arising out of or in connection with the choice of persons to fill seats in the Council of States or the House of the People or the nomination of any person by the Government of an Indian State;
- (i) the manner in which the rules are to be carried into effect.

FIFTH SCHEDULE

[Section 126 (4)]

INSTRUCTIONS TO THE GOVERNORS OF PROVINCES

1. In these instructions, unless the context otherwise requires, the term 'Governor' shall include every person for the time being acting as Governor according to the provisions of this Constitution.

2. In making appointments to his Council of Ministers the Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind

[Cf. Instructions to the Governors of Indian Provinces under the Government of India Act, 1935, Paragraphs I, VII, VIII and XX.]

the need for fostering a sense of joint responsibility among the Ministers.

3. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under this Constitution to exercise in his discretion, the Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers.

4. The Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the Province, and to secure amongst all classes and creeds cooperation, goodwill and mutual respect for religious beliefs and sentiments.

SIXTH SCHEDULE

[Sections 131(6), 133 and 158(2)]

PART I—COMPOSITION OF PROVINCIAL LEGISLATURES

General qualifications for membership

[Cf. Government of India Act, 1935, Fifth Schedule, Paragraphs 1 and 2.]

1. A person shall not be qualified to be chosen to fill a seat in a Provincial Legislature unless he—

- (a) is a citizen of the Federation; and
- (b) possesses such of the other qualifications specified in or prescribed under this Schedule as may be appropriate in his case.

2. Upon the expiration of the term for which he is chosen to serve as a member of a Provincial Legislature, a person, if otherwise duly qualified, shall be eligible to be chosen to serve for a further term.

LEGISLATIVE ASSEMBLIES

3. The allocation of seats in Provincial Legislative Assemblies shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

4. In the Legislative Assembly of each Province specified in the first column of the Table of Seats there shall be the number of seats specified in the third column opposite to that Province, and of those seats—

- (a) the numbers specified in the fifth, seventh, ninth and eleventh columns shall be the numbers of seats reserved respectively for—
 - (i) the Muslim community,
 - (ii) the members of the Scheduled Castes,
 - (iii) the Scheduled Tribes excepting, in the case of Assam, the Scheduled Tribes in the autonomous districts in that Province, and
 - (iv) the Indian Christian community;
- (b) the number specified in the thirteenth column opposite to the Province of Assam shall be the number of seats reserved for the autonomous districts in that Province.

5. In delimiting the territorial constituencies for the purpose of election to the Legislative Assembly—

- (a) in the Province of Madras, there shall be formed three separate constituencies comprising the islands of Laccadive, Amindivi and Minicoy respectively, and one seat shall be allotted to each of the constituencies so formed out of the seats reserved for the Scheduled Tribes in that Province ;
- (b) in the United Provinces, there shall be formed one separate constituency comprising the scheduled areas in the Mirzapur district and one seat shall be allotted to the constituency so formed out of the seats reserved for Scheduled Tribes in that Province ;
- (c) in the Province of East Punjab, there shall be formed a separate constituency comprising the Spiti and Lahaul in Kangra district and one seat shall be allotted to the constituency so formed out of the seats in that Province, and the seat so allotted shall be reserved for the Scheduled Tribes in the areas included in such constituency.

6. A person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of a Province unless—

- (a) in the case of a seat reserved for a member of the Muslim community, a member of the Scheduled Castes, a member of the Scheduled Tribes and a member of the Indian Christian community and to which the provisions of clause (b) of this paragraph do not apply, he is respectively a Muslim, a member of the Scheduled Castes, a member of the Scheduled Tribes and an Indian Christian and he is entitled to vote in the choice of a member to fill that seat or any other seat in that Legislative Assembly ;
- (b) in the case of a seat reserved for any autonomous district in the Province of Assam except the autonomous district comprising the areas under the jurisdiction of the Shillong Municipal Board and the Shillong Cantonment Authority, or in the case of a seat to be filled in any constituency specially formed under clause (a), clause (b) or clause (c) of paragraph 5 of this Schedule, he is a member of the Scheduled Tribes in such district or constituency, as the case may be, and is entitled to vote in the choice of a member to fill that seat ;
- (c) in the case of any other seat, he is entitled to vote in the choice of a member to fill that seat or any other seat in that Legislative Assembly.

LEGISLATIVE COUNCILS

7. The allocation of seats in the Legislative Councils of Provinces having such Councils shall be as shown in the relevant Table of Seats appended to this Part of this Schedule.

8. In the Legislative Council of each Province specified in the first column of the Table of Seats, there shall be the number of seats specified in the second column opposite to that Province

and of those seats—

- (a) the numbers specified in the third column shall be seats to be filled by persons chosen from the university panel in the Province;
- (b) the numbers specified in the next five columns shall be the numbers of seats to be filled by persons chosen respectively from:
 - (i) the cultural and educational panel,
 - (ii) the agricultural panel,
 - (iii) the labour panel,
 - (iv) the industrial and commercial panel, and
 - (v) the administrative panel in the Province;
- (c) the number specified in the ninth column shall be seats other than those specified in clause (b) of this paragraph to be filled by persons elected by the members of the Legislative Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote; and
- (d) the number specified in the tenth column shall be seats to be filled by persons nominated by the Governor of the Province.

9. (1) A person shall not be qualified to be chosen to fill a seat in the Legislative Council of a Province to be filled under clause (c) of paragraph 8 of this Schedule by a person elected by the members of the Legislative Assembly of that Province unless he is entitled to vote in the choice of a member to fill some seat in that Assembly.

(2) A person shall be qualified to be chosen to fill a seat in the Legislative Council of a Province which is to be filled by a person nominated by the Governor of the Province if he is resident in the Province and is not disqualified to hold a seat in that Council by any of the provisions of this Constitution.

[Cf. Seanad Electoral (Panel Members) Act, 1937 (Irish Act No. 43 of 1937), Parts II and III.]

10. (1) Before the first general election to the Legislative Council of a Province there shall be prepared in the prescribed manner and in the prescribed form by such authority as may be appointed in this behalf by the Commission a register in which shall be included under separate parts the names of the bodies (hereinafter referred to as 'the constituent bodies') which are respectively entitled to nominate persons to the five panels of candidates to be constituted under clauses (a) to (e) of sub-section (3) of section 131 of this Constitution.

(2) The following provisions shall apply and have effect in relation to the register of the constituent bodies, that is to say—

- (a) no body shall be eligible to be registered in the part of the register relating to any particular panel unless its objects and activities relate to or are connected with or it is representative of persons engaged in one or more of the interests and services mentioned in clauses (a) to (e) of sub-section (3) of section 131 of this Constitution in respect of that particular panel;
- (b) no body which is formed or carried on wholly or substantially for profit or which carries on, as its sole or principal function, any trade or business for profit shall be eligible for registration in the said register;

- (c) no body which is composed wholly or mainly of persons who are employed under the Federation or under any unit or of persons who are employed under any local authority and the objects of which include the advancement or protection of the interests of such persons in relation to their said employment shall be eligible for registration in the said register;
 - (d) every body which is registered in the said register shall be so registered in respect of one, and only one, panel;
 - (e) no body shall be registered in the said register save in pursuance of an application in that behalf made by such body in the prescribed manner;
 - (f) the number of constituent bodies registered in the said register in respect of any particular panel shall be so limited that the full number of persons who may be nominated to such panel by constituent bodies shall not exceed fifty.
- (3) After the register of constituent bodies has been prepared under this paragraph, it shall be published in the Official Gazette of the Province and shall on such publication be final and conclusive and shall be in force for the first and every subsequent election to the said Council subject only to such annual revision as is provided for in this Part of this Schedule.

11. (1) The register of constituent bodies prepared and published under paragraph 10 shall be revised annually by such authority as may be appointed in this behalf by the Commission in the prescribed manner and the provisions of this Part of this Schedule applicable to the preparation of the said register shall apply to such revision of the register.

(2) As soon as any annual revision of the register of constituent bodies has been completed under sub-paragraph (1) the register so revised at such annual revision shall be published by the Commission in the Official Gazette of the Province and on such publication the register so revised shall be conclusive evidence of the alterations made in the said register at such annual revision.

12. (1) Every constituent body which is registered in the register of constituent bodies in respect of any particular panel shall be entitled to nominate to such panel such number of persons as is provided hereinafter in this paragraph.

(2) The several constituent bodies entitled to nominate persons to a particular panel shall each be entitled to nominate the same number of persons to such panel and that number shall be ascertained as follows, that is to say:

- (a) if the number of constituent bodies entitled to nominate persons to such panel is not less than the number of members to be elected to the Council from persons nominated to such panel by constituent bodies, each such constituent body shall be entitled to nominate two persons to such panel;
- (b) if the number of constituent bodies entitled to nominate as aforesaid is not less than one-half but is less than the whole of the number of members to be elected to the Council as aforesaid, each such constituent body shall be entitled to nominate four persons to such panel;

(c) if the number of constituent bodies entitled to nominate as aforesaid exceeds one, but is less than one-half of the number of members to be elected to the Council as aforesaid, each such constituent body shall be entitled to nominate eight persons to such panel ;

(d) if only one constituent body is entitled to nominate as aforesaid, such constituent body shall be entitled to nominate to such panel a number of persons equal to twice the number of members to be elected to the Council as aforesaid.

(3) The Governor may for any election to the Legislative Council of the Province from a panel of candidates constituted under any of the clauses (a) to (e) of sub-section (3) of section 131 of this Constitution, by Order, vary the number of persons which the constituent bodies in respect of such panel are entitled to nominate under sub-paragraph (2) of this paragraph, and when any such order is made the number of persons specified in respect of any particular panel in such order shall be the number of persons which the constituent bodies in respect of such panel shall be entitled to nominate to such panel for such election.

13. (1) Before the first general election and thereafter before each triennial election to the Legislative Council of a Province under sub-section (6) of section 131 of this Constitution—

(a) each university in the Province shall for the purpose of constituting the university panel be invited by the Returning Officer in the prescribed manner to nominate to such panel within such time as may be fixed in this behalf by the Commission a number of persons, in the case of Madras and the United Provinces, equal to the number of members to be elected to the Council from such panel and, in the case of other Provinces equal to twice such number ;

(b) each constituent body entitled to nominate persons to a particular panel constituted under any of the clauses (a) to (e) of sub-section (3) of the said section shall be invited by the Returning Officer in the prescribed manner to nominate within such time as may be fixed in this behalf by the Commission the persons which it is entitled so to nominate.

(2) All nominations to a panel by any university or by any constituent body shall be made in the prescribed manner on a nomination paper in the prescribed form.

(3) Where any university or any constituent body purports to nominate by a nomination paper either more persons or less persons to a panel than such university or, as the case may be, such constituent body is entitled so to nominate, such nomination paper shall be wholly void.

14. No person shall be nominated by a university in any Province to any university panel unless he is entitled to vote in the choice of a member to fill the seat in the Legislative Council of that Province to be filled by a person chosen from such panel.

15. (1) No person shall be nominated by a constituent body to any particular panel constituted under any of the clauses (a) to (e) of sub-section (3) of section 131 of this Constitution unless he is a person having knowledge or practical experience of one or

more of the interests or services specified in the said clauses in respect of that particular panel.

(2) No person shall be nominated by any constituent body as aforesaid in any Province if he is not qualified to be chosen to fill a seat in the Legislative Assembly of that Province.

16. No person shall be nominated to more than one panel.

17. (1) After the expiration of the time fixed for nominations to panels under paragraph 13 the nominations made shall be scrutinised by the Returning Officer in the prescribed manner on the date or dates fixed in that behalf by the Commission.

(2) If, on the scrutiny of the nominations, any person is found to be entered in two or more panels, the following provisions shall have effect, that is to say :

(a) the Returning Officer shall retain the name of such person on such one of those panels as such person or his agent shall elect ;

(b) if such person or his agent, as the case may be, refuses or fails to make such election, or neither such person nor his agent is present or reasonably available, the Returning Officer shall retain the name of such person on such one of the panels as the Returning Officer shall determine by lot;

(c) the Returning Officer shall delete the name of such person from all the panels except the one on which he is required under clause (a) or (b) of this sub-paragraph to retain the name of such person.

18. (1) After the completion of the scrutiny of the nominations the Returning Officer shall prepare in the prescribed manner a list of the panels containing the names of all persons validly nominated to each such panel.

(2) If, when all the panels have been so prepared, the number of persons whose names are entered in any panel is not at least twice the number of members to be elected to the Council from persons nominated to such panel, the Returning Officer shall adjourn to a convenient day and hour the further proceedings with regard to the completion of the panel and shall forthwith report to the Governor of the Province the said deficiency in the said panel and forward to the Governor at the same time a list of the panels containing the names of persons validly nominated to each such panel prepared by him under sub-paragraph (1) of this paragraph.

19. Upon receiving such report the Governor shall nominate to every panel in respect of which he receives a report such number of persons as will be sufficient to bring the number of persons on such panels up to a number equal to twice the number of members to be elected to the Council from persons nominated to such panel, and shall cause the said nominations to be forwarded to the Returning Officer for inclusion in the panels concerned.

20. On receipt of the nominations from the Governor the Returning Officer shall complete the preparation of the panels in the prescribed manner and the panels of candidates so prepared shall then be published in the Official Gazette of the Province and on such publication shall be final and conclusive and shall not, otherwise than in any election inquiry held under this Schedule, be called in question.

21. All decisions by the Returning Officer arising out of or relating to the preparation and completion of the panels shall be final and conclusive and shall not, otherwise than in any election inquiry held under this Schedule, be called in question.

22. (1) The seat or seats in the Legislative Council of a Province to be filled by a person or persons chosen from the university panel so formed shall be filled by an election in a constituency to be called the university constituency.

(2) Subject to the provisions of this Schedule, a person shall be qualified to be included in the electoral roll for the said constituency, if he has a place of residence in India and either—

(a) (i) in the case of Madras, Andhra, Annamalai, Bombay, Calcutta or Assam University, is a member of the Senate of the University;

(ii) in the case of the Allahabad or Lucknow University, is a member of the Court, Executive Council or Academic Council of the University;

(iii) in the case of the Agra University, is a member of the Senate, Executive Council or Academic Board of the University; and

(iv) in the case of the Patna University, is a member of the Senate or of the Syndicate of the University; or

(b) is a graduate of the university or, as the case may be, any university in the Province and was registered as such in the university register throughout the two years immediately preceding the prescribed date :

Provided that for the purposes of the preparation of the original electoral rolls for the Assam University constituency and of any revision thereof within the two years from the final publication of the original electoral rolls so prepared, the following qualification shall be substituted for qualification (b) mentioned in this sub-paragraph, that is to say—

‘(b) is a graduate of the University and was registered as such in the University register in the year immediately preceding the prescribed date.’

23. The members to be elected to the Legislative Council of a Province from the panels of candidates constituted under clauses (a) to (e) of sub-section (3) of section 131 of this Constitution shall be elected by the members of the Legislative Assembly of the Province in accordance with the system of proportional representation by means of the single transferable vote and the voting at every such election shall be by secret ballot.

24. The term of office of a member of the Legislative Council of a Province, other than a member chosen to fill a casual vacancy, shall be nine years, but upon the first constitution of the Council the Governor shall make, by Order, such provision as he thinks fit, by curtailing the term of office of some of the members then chosen for securing that, as nearly as may be, one-third of the members holding seats of each class referred to in clauses (a) to (c) of sub-section (2) of section 131 of this Constitution shall retire in every third year thereafter.

A member chosen to fill a casual vacancy shall be chosen to serve for the remainder of his predecessor's term of office.

[Cf. Government of India (Provincial Legislative Assemblies) Order, 1936, Parts II (Paragraph 28), III (Paragraph 23), IV (Paragraph 27).]

TABLE OF SEATS

Provincial Legislative Assemblies

1	2	3	4	5	6	7	8	9	10	11	12	13
Province	Total population	Total seats	Population of Muslims	Seats reserved for Muslims	Population of Scheduled Castes	Seats reserved for Scheduled Castes	Population of Scheduled Tribes except those in the autonomous districts of Assam	Seats reserved for Scheduled Tribes except the autonomous districts of Assam	Population of Indian Christians	Seats reserved for Indian Christians	Population of autonomous districts in Assam	Seats reserved for autonomous districts in Assam
Madras	49,341,810	300	3,896,452	24	8,068,492	49	562,029	6(a)	2,001,082	12	..	..
Bombay	20,849,840	208	1,920,368	19	1,855,148	19	1,614,298	16	338,812	3	..	..
West Bengal	21,211,427	212	5,331,799	53	3,311,241	33	1,356,268	14	60,222	..	..	..
United Provinces	55,020,617	300	8,416,308	46	11,717,158	63	289,422	2(b)	131,327	..	..	..
East Punjab	12,617,175	126	4,412,414	44	1,014,756	10	11,700(c)	1(d)	115,696	..	..	..
Bihar	36,340,151	300	4,716,314	39	4,340,379	36	5,055,647	42	24,693	..	..	..
Central Provinces and Berar.	16,813,584	168	783,697	8	3,051,413	30	2,937,364	29	48,260	..	..	..
Assam	7,471,531	78	1,751,717	18	377,025	4	800,000 (approximately)	8	35,483	..	858,566	12
Orissa	8,728,544	87	146,301	1	1,238,171	12	1,721,006	17	26,584	..	..	..

(a) Of the seats in the Province of Madras reserved for Scheduled Tribes one seat each shall be allotted to the constituencies specially formed of the islands of Laccadive, Amindivi and Minicoy respectively.

(b) Of the seats in the Province of the United Provinces reserved for Scheduled Tribes one seat shall be allotted to the constituency specially formed of the scheduled areas in the Mirzapur district.

(c) Population of Spiti and Lahaul in the Kangra district of East Punjab, mostly Tibetan.

(d) The seat shown in the ninth column opposite to the Province of East Punjab shall be allotted to a constituency to be specially formed of Spiti and Lahaul in the Kangra district, and reserved for Scheduled Tribes in those areas.

TABLE OF SEATS

Provincial Legislative Councils

1	2	3	4	5	6	7	8	9	10
Province	Total seats	Seats to be filled from the university panel	Seats to be filled from				The administrative panel		
			The cultural and educational panel	The agricultural panel	The labour panel	The industrial and commercial panel	The administrative panel	Seats to be filled by Legislative Assembly	Seats to be filled by nomination by the Governor

Madras

Bombay

West Bengal

United Provinces

Bihar

Assam

PART II—PROVISIONS AS TO FRANCHISE

25. There shall be an electoral roll for every territorial constituency and for every university constituency and no person who is not, and, except as expressly provided by this Part of this Schedule, every person who is, for the time being, included in the electoral roll for any such constituency, shall be entitled to vote in that constituency.

26. The electoral rolls for the territorial constituencies and for the university constituencies shall be made up and from time to time in whole or in part revised by reference to such date in this Part of this Schedule referred to as "the prescribed date" as may be directed in each case by the Commission.

27. (1) Every person who is not less than twenty-one years of age and is not subject to any of the disqualifications hereinafter set out shall be entitled to be included in the electoral roll for a territorial constituency.

(2) Subject to the provisions of paragraph 22 of this Schedule every person who is not less than 21 years of age and is not subject to any of the disqualifications hereinafter set out shall be entitled to be included in the electoral roll for any university constituency.

28. No person shall be included in the electoral roll for any territorial constituency or any university constituency unless he is a citizen of the Federation.

29. No person shall be included in the electoral roll for, or vote at any election in, any territorial constituency or any university constituency if he is of unsound mind and stands so declared by a competent court.

30. No person shall at a general election for the Legislative Assembly of a Province or at the first general election or any subsequent triennial election under sub-section (6) of section 131 of this Constitution for the Legislative Council of a Province vote in more than one territorial constituency in such Province and in each Province such provisions, if any, as may be prescribed in relation to that Province shall have effect for the purpose of preventing persons being included in the electoral roll for more than one territorial constituency, and if a person votes in more than one constituency in contravention of this paragraph, his vote in each of the constituencies shall be void.

31. No person shall be included in the electoral roll for, or vote at any election in, a territorial constituency or any university constituency, if he is for the time being disqualified from voting under the provisions of this Schedule or under any such Act of the Provincial Legislature or rules made by the Governor as may be passed or made under this Constitution with respect to corrupt practices and other offences in connection with elections and the name of any person who becomes so disqualified shall forthwith be struck off all the electoral rolls for territorial constituencies and university constituencies in which it may be included.

32. No person shall vote at any election in any territorial constituency or any university constituency if he is for the time

[Cf. Government of India Act, 1935, Sixth Schedule, Part I; Government of India (Provincial Legislative Assemblies) Order, 1936, Part I; Government of India (Provincial Legislative Councils) Order, 1936, Part I.]

being undergoing a sentence of transportation, penal servitude or imprisonment.

33. A person shall not be disqualified to be included in the electoral roll for any territorial constituency unless he has a place of residence in that constituency and has resided in such place for a period of not less than 180 days in the previous financial year.

34. In a territorial constituency in which seats are reserved for the Muslim community, members of the Scheduled Castes, members of the Scheduled Tribes or the Indian Christian community, a Muslim, a member of the Scheduled Castes, a member of the Scheduled Tribes or an Indian Christian shall not be disqualified to hold a seat not so reserved.

35. Where at an election in a territorial constituency or in any university constituency a poll is taken for the purpose of filling more than one seat, a voter shall have as many votes as there are seats to be filled on the poll, but shall not be entitled to give more than one vote to any one candidate.

36. (1) The provisions of this paragraph shall apply in relation to any election in a territorial constituency where the seats to be filled include a seat or seats reserved for the Muslim community, or members of the Scheduled Castes, or the Scheduled Tribes, or the Indian Christian community.

(2) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is equal to the number of seats so reserved, all those candidates shall be declared to be elected to fill the reserved seat or reserved seats and a poll shall only be taken, if necessary, for filling any seat or seats not filled under this sub-paragraph.

(3) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is greater than the number of seats so reserved, then, when the counting of the votes has been completed, the Returning Officer shall first declare that one, or those, of the qualified candidates to whom the largest number of votes has been given, to be elected to fill reserved seat or reserved seats.

(4) If the number of candidates qualified to be chosen to fill a seat or seats so reserved is less than the number of seats so reserved, all those candidates, if any, shall be declared to be elected to fill seats so reserved, and the Governor shall by public notification call on the constituency to elect a person or persons, as the case may be, within such time as may be specified in the notification :

Provided that where a constituency having been already so called upon has failed to elect a person, or the requisite number of persons, as the case may be, to fill the vacancy or vacancies, the Governor shall not be bound again to call upon the constituency to elect a person or persons to fill the vacancy or vacancies until such time as he may think fit.

37. If, when a poll has been taken at any election, an equality of votes is found to exist between any candidates, and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be given by the Returning Officer to the candidate, or as the case may be, the candidates selected by lot drawn in the presence of the Returning Officer in such manner as he may determine.

38. (1) The fact that a person has in relation to any constituency more than one qualification to be included in the electoral roll therefor shall not increase his rights as respects inclusion in that roll.

(2) No person shall be entitled to be included twice in the electoral roll for any particular constituency, and the fact that a person is included twice in the electoral roll for a constituency shall not increase his rights as respects voting therein.

39. If a person is elected to more than one seat in the Legislative Assembly or the Legislative Council of a Province, then, unless within the prescribed time he resigns all but one of the seats, all the seats in that Assembly or Council, as the case may be, shall become vacant.

40. (1) The dates on which nominations are to be made and scrutinised, polls held and other acts done in connection with elections to the Provincial Legislature, shall be fixed by the Commission.

(2) Nothing in this paragraph shall be construed as preventing Acts of the Provincial Legislature or rules from making general provision with respect to the intervals which are to elapse between the successive stages of an election.

41. (1) In all territorial and university constituencies the electoral rolls shall be prepared by such authority as the Commission shall appoint :

Provided that in the preparation of such rolls, the authority so appointed may, subject to any prescribed restrictions, employ such persons as he thinks fit.

(2) In all territorial and university constituencies and at all elections the Returning Officer shall be a person serving in connection with the affairs of the Federation or of a Province.

42. At any election by the members of the Legislative Assembly of a Province to fill seats in the Legislative Council of that Province, the Returning Officer shall be nominated by the Commission, and nominations shall be made and scrutinised, polls held and other acts done in connection with the election to, by, or before the Returning Officer or persons who are under his control or have been placed thereunder for the purposes of the election.

PART III—DELIMITATION OF TERRITORIAL CONSTITUENCIES

43. (1) The territorial constituencies for the election of persons to fill seats in the Provincial Legislative Assemblies shall be those specified in the first column of the relevant tables appended to this Part of this Schedule, the extent thereof shall be as specified in the second column of those tables and the total number of seats to be filled in each of them shall be as specified in the third column of those tables.

(2) Of the total number of seats to be filled in each constituency the number of seats, if any, specified in the fourth, fifth, sixth and seventh columns of the table shall respectively be reserved for the Muslim community, members of the Scheduled Castes, members of the Scheduled Tribes and the Indian Christian community.

44. The Governor of a Province may at any time, by Order, vary the name of any territorial constituency, if he deems it expedient so to do.

TERRITORIAL CONSTITUENCIES IN THE PROVINCES

I—MADRAS

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

II—BOMBAY

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

III—WEST BENGAL

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

IV—THE UNITED PROVINCES

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

V—EAST PUNJAB

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

VI—BIHAR

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

VII—THE CENTRAL PROVINCES & BERAR

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

VIII—ASSAM

Autonomous Districts Constituency

Name of Constituency	Extent of Constituency	Number of seats

Other Territorial Constituencies

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

IX—ORISSA

Name of Constituency	Extent of Constituency	Number of seats	Muslim seats	Scheduled Castes seats	Scheduled Tribes seats	Indian Christian seats

PART IV—ELECTION AGENTS AND EXPENSES

[Cf. Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, Part II.]

45. (1) Every person nominated as a candidate at an election shall at the prescribed date and in the prescribed manner appoint either himself or some one other person to be his election agent.

(2) No person shall be appointed an election agent who is disqualified from being an election agent under the provisions of this Schedule.

46. (1) Any revocation of the appointment of an election agent, whether he be the candidate himself or not, shall be signed by the candidate, and shall operate from the date on which it is lodged with the Returning Officer.

(2) In the event of such a revocation or of the death of an election agent, whether that event occurs before or during the election, or after the election but before a return of the candidate's election expenses has been lodged in accordance with the provisions of paragraph 48 of this Schedule, the candidate shall appoint forthwith either himself or some other person to be his election agent, and shall give notice in writing of the appointment to the Returning Officer.

47. Every election agent shall, for each election for which he is appointed election agent, keep separate and regular books of account, and shall enter therein such particulars of his expenditure in connection with the election as may be prescribed.

48. (1) Within the prescribed time after every election, there

shall be lodged with the Returning Officer, in respect of each person who has been nominated as a candidate a return of the election expenses of that person signed both by him and his election agent.

(2) Every such return shall be in such form and shall contain such particulars as may be prescribed, and shall be accompanied by declarations in the prescribed form by the candidate and his election agent made on oath or solemn affirmation before a magistrate.

(3) Notwithstanding anything in this paragraph, where a candidate is owing to absence from India unable to sign the return of election expenses and to make the required declaration, the return shall be signed and lodged by the election agent only and shall be accompanied by a declaration by the election agent only and the candidate shall within fourteen days after his return to India cause to be lodged with the Returning Officer, a declaration made on oath or solemn affirmation before a magistrate in such form as may be prescribed.

49. In each Province provision shall be made by an Act of the Provincial Legislature or by rules, fixing the maximum scales of election expenses at elections and the numbers and descriptions of persons who may be employed for payment in connection with elections :

Provided that no provision need be so made in any Province with respect to any election held before the expiration of two years from the commencement of this Constitution.

50. Except as far as may be prescribed, this Part of this Schedule shall not apply to an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council.

PART V—DECISION OF DOUBTS AND DISPUTES AS TO THE VALIDITY OF AN ELECTION AND DISQUALIFICATIONS FOR CORRUPT PRACTICES

51. In this Part of this Schedule, except where it is otherwise expressly provided or the context otherwise requires,—

- (a) 'agent' includes an election agent and any person who, on the trial of an election petition, is held by the tribunal to have acted as an agent in connection with the election with the knowledge or consent of the candidate ;
- (b) 'candidate' means a person who has been or claims to have been duly nominated as a candidate at an election, and a candidate who, with the election in prospect, has held himself out as a prospective candidate, shall be deemed to have been a candidate as from the time when he began so to hold himself out ;
- (c) 'corrupt practice' in relation to an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council, means one of the practices specified in Parts I and II of the Twelfth Schedule to this Constitution, and in relation to any other election, means one of the practices specified in Parts I, II and III of that Schedule ;

[Cf. Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, Part III.]

- (d) 'electoral right' means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election ;
- (e) 'returned candidate' means a candidate whose name has been published in the prescribed manner as duly elected.

52. No election shall be called in question except by an election petition presented in accordance with the provisions of this Part of this Schedule.

53. (1) An election petition against any returned candidate may be presented to the Governor—

- (a) by any candidate or elector on any ground ;
- (b) by an officer empowered in that behalf by the Governor, on the ground that the election has not been a free election by reason of the large number of cases in which undue influence or bribery has been exercised or committed.

(2) A petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself has been duly elected, but such a declaration shall only be claimed on one or other of the following grounds—

- (a) that in fact the petitioner received a majority of the valid votes ; or
- (b) that but for the votes obtained for the returned candidate by corrupt practices, the petitioner would have obtained a majority of the valid votes.

54. (1) Unless the Governor dismisses a petition for non-compliance with the prescribed requirements, he shall forward the same to the Commission who shall appoint as members of a tribunal for the trial of the petition three persons who are or have been or are eligible to be appointed judges of a High Court and shall appoint one of them to be the Chairman :

Provided that nothing in this sub-paragraph shall be deemed to prevent the appointment of the Chairman of a tribunal before the other members are appointed.

(2) Subject to the provisions of this paragraph, all applications and proceedings in connection with the petition shall be dealt with by, and carried on by or before, the tribunal.

(3) Where in respect of any election in a constituency more petitions than one are presented, the Commission shall on receipt of such petitions from the Governor refer all those petitions to the same tribunal and the tribunal may at its discretion inquire into the petitions either separately or in one or more groups as it thinks fit.

(4) If the services of any member of the tribunal are not available for the purposes of the inquiry or if during the course of the inquiry any member is unable to continue to attend thereat, the Commission shall appoint another member and the inquiry shall recommence before the tribunal as so re-constituted :

Provided that the tribunal may direct that any evidence already recorded shall remain upon record and in that case it shall not be necessary to re-examine those witnesses who have already been examined and discharged.

(5) References to the tribunal in this Part of this Schedule

shall, as respects any matter to be done before the commencement of the inquiry, be deemed to be references to the Chairman.

55. When at an inquiry into an election petition the tribunal so orders, the Advocate-General of the Province or some person acting under his instructions shall attend and shall take such part therein as the tribunal may direct.

56. Subject to the provisions of this Part of this Schedule, Acts of the Provincial Legislature and rules may regulate the form of election petitions, the time and manner in which they are to be presented, the persons who are to be made parties thereto, the procedure to be adopted in connection therewith and the circumstances in which petitions are to abate, or may be withdrawn, and in which new petitioners may be substituted, may require security to be given for costs and may authorise the Governor to dismiss petitions for non-compliance with the prescribed requirements.

57. (1) Subject to the provisions of this paragraph if in the opinion of the members of the tribunal—

- (a) the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt practice; or
- (b) any corrupt practice specified in Part I of the Twelfth Schedule to this Constitution has been committed in the interests of a returned candidate; or
- (c) the result of the election has been materially affected by the improper acceptance or rejection of any nomination, or by reason of the fact that any person nominated was not qualified or was disqualified for election, or by the improper reception or refusal of a vote, or by the reception of any vote which is void, or by any non-compliance with the provisions of this Constitution or of any Act of the Provincial Legislature or rules relating to the election, or by any mistake in the use of any prescribed form; or
- (d) the election has not been a free election by reason of the large number of cases in which bribery or undue influence has been exercised or committed,

the election of the returned candidate shall be void.

(2) If the tribunal reports that a returned candidate has been guilty by an agent other than an election agent, of any corrupt practice specified in Part I of the Twelfth Schedule to this Constitution, but further reports that the candidate has satisfied the tribunal that—

- (a) no corrupt practice was committed at the election by the candidate or his election agent, and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of the candidate or his election agent;
- (b) the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election;
- (c) the corrupt practices mentioned in the report were of a trivial and limited character or took the form of customary hospitality which did not affect the result of the election; and

(d) in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the tribunal may find that the election of the candidate is not void.

(3) If a person (not being entitled so to do) votes more than once at the same election, all his votes shall be deemed for the purposes of this paragraph, to be void.

58. (1) At the conclusion of the inquiry the tribunal shall report whether the returned candidate, or any person who has lodged a petition and claimed a seat, has been duly elected and in so reporting shall have regard to the provisions of the last preceding paragraph.

(2) The report shall further include a recommendation by the tribunal as to the total amount of costs which are payable and the persons by and to whom costs shall be paid, and any such recommendation may include a recommendation for the payment of costs to the Advocate-General of the Province or a person acting under his instructions attending the trial in pursuance of an order of the tribunal.

(3) The report shall be signed by all the members of the tribunal and the tribunal shall forward the report to the Commission who shall forthwith submit it to the Governor and the Governor on receipt thereof shall issue orders in accordance with the report and publish the report in the Official Gazette of the Province, and the order of the Governor shall be final.

59. If either in the report of the tribunal or upon any other matter there is a difference of opinion among the members of the tribunal, the opinion of the majority shall prevail and the report of the tribunal shall be expressed in terms of the view of the majority.

60. Where any charge is made in an election petition of any corrupt practice, the tribunal shall record in its report—

(a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or his agent or with the connivance of any candidate or his agent, and the nature of that corrupt practice; and

(b) the names of all persons, if any, who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of that practice with any such recommendations as the tribunal may think proper to make for the exemption of any persons from any disqualifications which they may have incurred in this connection under paragraphs 62 to 64 of this Schedule :

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

PART VI—DISQUALIFICATIONS

[Cf. Government of India (Provincial Elections) (Corrupt

61. The offences and practices specified, in relation to certain elections, in the Thirteenth Schedule to this Constitution shall, for the periods respectively specified in relation to those offences

and practices in that Schedule, entail disqualification for membership of any Provincial Legislature.

62. If any person--

(a) is, in connection with an election to a Provincial Legislature, the Coorg Legislative Council or a local body within a Governor's or Chief Commissioner's Province, convicted of an offence under Chapter IXA of the Indian Penal Code punishable with imprisonment for a term exceeding six months; or

(b) is, after an inquiry under Part V of this Schedule, reported as guilty of any such corrupt practice as is specified in Part I or Part II of the Twelfth Schedule to this Constitution,

he shall, for a period of six years from the date of the conviction or report, be disqualified for voting at any election.

63. If, in relation to any election (other than an election by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council) any person is after such an inquiry as aforesaid reported as guilty of any such corrupt practice as is specified in Part III of the Twelfth Schedule to this Constitution, he shall be disqualified for voting at any election for a period of four years from the date of the report.

64. If default is made in making the return of the election expenses of any person who has been nominated as a candidate at an election to which Part IV of this Schedule applies, or if such a return is found, either by a tribunal holding an inquiry into the election or by any court in a judicial proceeding, to be false in any material particular the candidate and his election agent shall be disqualified for voting at any election for a period of five years from the date by which the return was required to be lodged.

65. Every person shall be disqualified for voting at any election who is for the time being disqualified for voting at elections to either House of the Federal Parliament by reason of misconduct in connection with an election to the Federal Parliament, or by reason of a default in making, or of the falsity of, any return of election expenses at any election to the Federal Parliament.

66. Any person who is for the time being disqualified under the foregoing provisions of this Part of this Schedule for being a member of a Provincial Legislature, or for voting at elections, shall, so long as the disqualification exists, also be disqualified for being an election agent at any election.

67. Any disqualification under paragraphs 62 to 64 of this Part of this Schedule arising in connection with an election to the legislature of, or to a local body in, a Province may be removed by the Governor of that Province and any other disqualification under the said paragraph 62 may be removed by the President.

68. In paragraph 61 of this Part of this Schedule, "election" includes all the elections referred to in the Thirteenth Schedule to this Constitution, but save as aforesaid, the references in this Part of this Schedule to elections, other than express references to elections of any other kind, shall be construed as references to elections as defined in paragraph 69 of this Schedule.

Practices and
Election Peti-
tions) Order,
1936, Part IV.]

PART VII—GENERAL

69. (1) In this Schedule, except where the context otherwise requires—

- (a) 'Commission' means the Commission appointed by the President under section 224 of this Constitution;
- (b) 'election' means an election to fill a seat or seats in either House of a Provincial Legislature;
- (c) 'panel' means a panel of candidates formed under sub-section (3) of section 131 of this Constitution;
- (d) 'person' does not include a body of persons;
- (e) 'preparation' in relation to any electoral roll includes the revision thereof and prepare shall be construed accordingly;
- (f) 'prescribed', except in the phrase "the prescribed date", means prescribed by an Act of the Provincial Legislature or by a rule made under paragraph 70 of this Schedule;
- (g) 'previous financial year' means the financial year immediately preceding that in which the prescribed date falls;
- (h) 'rules' means rules made under paragraph 70 of this Constitution;
- (i) 'sign' in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed;
- (j) 'territorial constituency' means one of the territorial constituencies mentioned in the table appended to Part III of this Schedule;
- (k) 'the university panel' means the panel required by sub-section (3) of section 131 of this Constitution to contain the names of representatives of universities in a Province;
- (l) 'the cultural and educational panel' means the panel required by clause (a) of the said sub-section to contain the names of persons having knowledge or practical experience of the following interests and services, namely, the national language and culture, literature, art, education and such professional interests as may be defined by Act of the Provincial Legislature for the purpose of this panel;
- (m) 'the agricultural panel' means the panel required by clause (b) of the said sub-section to contain the names of persons having knowledge or practical experience of agriculture and allied interests;
- (n) 'the labour panel' means the panel required by clause (c) of the said sub-section to contain the names of persons having knowledge or practical experience of labour;
- (o) 'the industrial and commercial panel' means the panel required by clause (d) of the said sub-section to contain the names of persons having knowledge or practical experience of the following interests and services, namely, industry and commerce including banking, finance, accountancy, engineering and architecture;
- (p) 'the administrative panel' means the panel required by clause (e) of the said sub-section to contain the names of persons having knowledge or practical experience of public administration and social services.

(2) The provisions of Part V of this Schedule shall, in relation to elections held to fill seats in a Provincial Legislative Council to be filled by persons chosen from panels of candidates constituted under sub-section (3) of section 131 of this Constitution, have effect with such exceptions and subject to such adaptations and modifications as may be prescribed, but subject as aforesaid, the nominations to, and all acts done in connection with the preparation of, any panel shall be deemed to form part of the election held to fill a seat or seats in a Provincial Legislative Council to be filled by a person or persons chosen from such panel.

(3) For the purposes of this Schedule, a person shall be deemed to reside in a place if he sometimes uses it as a sleeping place, and a person shall not be deemed to cease to reside in a place merely because he is absent from it or has another dwelling in which he resides, if he is at liberty to return to the place at any time and has not abandoned his intentions of returning.

(4) Any reference in this Schedule to any of the provisions of any Indian Act shall be construed as a reference to those provisions as amended by, or under, any other law or, if those provisions are repealed and re-enacted with or without modifications, to the provisions so re-enacted.

(5) If the boundaries of any district or other administrative area mentioned in this Schedule or in the Tenth Schedule to this Constitution are altered, any reference in this Schedule or in the said Schedule to that district or area shall, as from such date or dates as may be fixed by the Governor either for all purposes or for any particular purposes of this Schedule, or of the Seventh Schedule to this Constitution be taken as a reference to the district or area so altered.

(6) Where under any of the provisions of this Schedule anything is to be prescribed, different provisions may be made for different cases or classes of cases.

70. In so far as provision with respect to any matter is not made in this Schedule or by an Act of the Provincial Legislature, the Governor may make rules for carrying into effect the foregoing provisions of this Schedule and securing the due constitution of the Provincial Legislature and in particular, but without prejudice to the generality of the foregoing words, with respect to—

(a) the notification of vacancies including casual vacancies and, subject to the provisions of sub-section (5) of section 131 of this Constitution, the proceedings to be taken for filling vacancies ;

(b) the nomination of candidates ;

(c) the preparation, publication and revision of the register of constituent bodies, the nomination of persons by such bodies, to the panel of candidates to be formed under sub-section (3) of section 131 of this Constitution and the preparation and publication of such panels ;

(d) the conduct of elections including the application to elections of the principle of proportional representation by means of the single transferable vote, and the rules to regulate elections where certain of the seats are reserved for the Muslim community, members of the Scheduled

[Cf. Govern-
ment of India.
Act. 1935, Fifth
Schedule, Para-
graph 20.]

- Castes, members of the Scheduled Tribes, or the Indian Christian community ;
- (e) the expenses of candidates at elections ;
 - (f) corrupt practices and other offences at or in connection with elections ;
 - (g) the decision of doubts and disputes arising out of or in connection with elections ;
 - (h) the manner in which the rules are to be carried into effect.

SEVENTH SCHEDULE

[Sections 161(a) and 162(1)]

PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

PART I—GENERAL

1. *Executive authority of a Province in scheduled areas:* Subject to the provisions of this Schedule the executive authority of a Province extends to the scheduled areas therein.

2. *Report by the Governor to the Federal Government regarding the administration of the scheduled areas:* The Governor of each Province having scheduled areas therein shall annually, or whenever so required by the Federal Government, make a report to that Government regarding the administration of the scheduled areas in that Province and the executive authority of the Federation shall extend to the giving of directions to the Province as to the administration of the said areas.

PART II—PROVISIONS AS TO THE PROVINCES OF MADRAS, BOMBAY, WEST BENGAL, BIHAR, CENTRAL PROVINCES AND BERAR, AND ORISSA

3. *Application of Part II:* The provisions of this Part shall apply only to the Provinces of Madras, Bombay, West Bengal, Bihar, Central Provinces and Berar, and Orissa.

4. *Tribes Advisory Council:* (1) As soon as may be after the commencement of this Constitution there shall be established in the Provinces of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa, a Tribes Advisory Council consisting of not less than ten and not more than twenty-five members of whom, as nearly as may be, three-fourths shall be elected representatives of the Scheduled Tribes in the Provincial Legislative Assembly.

(2) It shall be the duty of the Tribes Advisory Council generally to advise the Provincial Government on all matters pertaining to the administration of the scheduled areas, if any, and the welfare of the Scheduled Tribes in the Province.

(3) The Governor may make rules prescribing or regulating as the case may be—

- (a) the number of members of the Council, the mode of their

- appointment and of the appointment of its Chairman and of the officers and servants thereof ;
- (b) the conduct of its meetings and its procedure in general ;
 - (c) its relations with officials and local bodies in the Province ; and
 - (d) all other incidental matters.

5. *Law applicable to scheduled areas :* (1) The Governor may, if so advised by the Tribes Advisory Council for the Province, by public notification direct that any particular Act of the Federal Parliament or of the Provincial Legislature shall not apply to a Scheduled area or any part thereof in the Province or shall apply to a scheduled area or any part thereof in the Province subject to such exceptions and modifications as he may with the approval of the said Council specify in the notification :

Provided that where such Act relates to any of the following subjects, that is to say—

- (a) marriage ;
- (b) inheritance of property ;
- (c) social customs of the tribes ;
- (d) land other than lands which are reserved forest under the Indian Forests Act, 1927 or under any other law for the time being in force in the area in question including rights of tenancies, allotment of land and reservation of land for any purpose ;
- (e) any matter relating to village administration including the establishment of village panchayats ;

the Governor shall issue such direction when so advised by the Tribes Advisory Council.

(2) The Governor may, after consultation with the Tribes Advisory Council for the Province, make regulations for any scheduled area in the Province with respect to any matter not provided for by any law for the time being in force in such area.

(3) The Governor may also make regulations for any scheduled area in the Province with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards or relating to disputes other than those arising out of any such laws as may be defined in such regulations, and may by such regulations empower the headmen or *panchayats* in any such area to try such cases.

(4) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as an Act of the appropriate legislature which applies to such area and has been enacted by virtue of the powers conferred on that legislature by this Constitution.

6. *Alienation and allotment of lands to non-tribals in scheduled areas :* (1) It shall not be lawful for a member of the Scheduled Tribes to transfer any land in a scheduled area to any person who is not a member of the Scheduled Tribes.

(2) No land in a scheduled area vested in a Province shall be allotted to, or settled with, any person who is not a member of the Scheduled Tribes except in accordance with rules made in

that behalf by the Governor in consultation with the Tribes Advisory Council for the Province.

7. *Regulation of money-lending in scheduled areas:* The Governor may, and if so advised by the Tribes Advisory Council for the Province shall, by public notification, direct that no person shall carry on business as a money-lender in a scheduled area in the Province except under or in accordance with the conditions of a licence issued by an officer authorised in this behalf by the provincial Government and every such direction shall provide that a breach of it shall be an offence, and shall specify the penalty with which it shall be punishable.

8. *Estimated receipts and expenditure pertaining to scheduled areas to be shown separately in the annual financial statement:* The estimated receipts and expenditure pertaining to a scheduled area in a Province which are to be credited to, or is to be met from, the revenues of the Province shall be shown separately in the annual financial statement of the Province to be laid before the Provincial Legislature under section 149 of this Constitution.

9. *Application of Part II to areas other than scheduled areas:* (1) The Governor may, at any time by public notification, direct that all or any of the provisions of this Part of this Schedule shall on and from such date as may be specified in the notification apply in relation to any area in the Province inhabited by members of any Scheduled Tribe other than a scheduled area as they apply in relation to a scheduled area in the Province, and the publication of such notification shall be conclusive evidence that such provisions have been duly applied in relation to such other area.

(2) The Governor may by a like notification direct that all or any of the provisions of this Part of this Schedule shall on and from such date as may be specified in the notification cease to apply in relation to any area in the Province in respect of which a notification may have been issued under sub-paragraph (1) of this paragraph.

PART III—PROVISIONS AS TO THE UNITED PROVINCES

10. *Application of Part III:* The provisions of this Part shall apply only to the United Provinces.

11. *Scheduled Areas Advisory Committee:* (1) As soon as may be after the commencement of this Constitution the Governor shall, by Order, appoint for the Province a Scheduled Areas Advisory Committee, two-thirds of the members of which shall be the members of the Scheduled Tribes. Such order may define the composition, powers and procedure of the committee and may contain such incidental or ancillary provisions as the Governor may consider necessary or desirable.

(2) It shall be the duty of the Scheduled Areas Advisory Committee generally to advise the Provincial Government on all matters pertaining to the development of scheduled areas in the Province.

12. *Power of Governor to make regulations in certain cases :*

(1) The Governor may make regulations for any scheduled area in the Province with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards or for the trial of such classes of suits or cases of small pecuniary value as may be specified in such regulations, and may also by such regulations empower the headmen or *panchayats* in any such area to try such cases or suits.

(2) The Governor may also make regulations so as to prohibit the transfer of any land in a scheduled area in the Province by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

(3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate legislature which applies to such area and has been enacted by virtue of the powers conferred on that legislature by this Constitution.

13. *Estimated receipts and expenditure pertaining to scheduled areas to be shown separately in the Annual Financial Statement :* The estimated receipts and expenditure pertaining to the scheduled areas in the Province which are to be credited to, or is to be met from, the revenues of the Province shall be shown separately in the Annual Financial Statement of the Province to be laid before the Provincial Legislature under section 149 of this Constitution.

PART IV—PROVISIONS AS TO THE PROVINCE OF EAST PUNJAB

14. *Application of Part IV :* The provisions of this Part shall apply only to the Province of East Punjab.

15. *Appointment of Scheduled Areas Advisory Committee :*

(1) As soon as may be after the commencement of this Constitution the Governor shall, by Order, appoint for the Province a Scheduled Areas Advisory Committee, two-thirds of the members of which shall be the residents of the scheduled areas in the Province. Such order may define the composition, powers and procedure of the committee and may contain such incidental or ancillary provisions as the Governor may consider necessary or desirable.

(2) It shall be the duty of the Scheduled Areas Advisory Committee generally to advise the Provincial Government on all matters pertaining to the administration of the scheduled areas in the Province.

16. *Application of Acts of the Federal Parliament or of the Provincial Legislature to scheduled areas :* The Governor may, by public notification, direct that any particular Act of the Federal Parliament or of the Provincial Legislature shall not apply to a scheduled area or any part thereof in the Province or shall apply to a scheduled area or any part thereof in the Province subject to such exceptions and modifications as he may specify in the notification.

17. *Power of Governor to make regulations :* (1) The Governor may make regulations for any scheduled area in the Province

with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards, or for the trial of such classes of suits or cases of small pecuniary value as may be specified in such regulations, and may also by such regulations empower the headmen and *panchayats* in any such area to try such cases or suits.

(2) The Governor may also make regulations so as to prohibit the transfer of any land in a scheduled area in the Province by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

(3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate legislature which applies to such area and has been enacted by virtue of the powers conferred on that legislature by this Constitution.

PART V—SCHEDULED AREAS

18. The areas specified in Parts I to VII of the table below shall be the scheduled areas within the meaning of this Constitution, and any reference in the said table to any division, district, administrative area, tahsil or estate shall be construed as a reference to that division, district, area, tahsil or estate as existing on the date of commencement of this Constitution.

TABLE

I—MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

II—BOMBAY

In the West Khandesh District: The Navapur Petha, the Akrani Mahal and the villages belonging to the following Mehwasli Chiefs: (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walvi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur.

In the East Khandesh District: The Satpura Hill reserved forest areas.

In the Nasik District: The Kalvan Taluk and Peint Petha.

In the Thana District: The Dahanu and Shahapur Talukas and Mokhada and Umbergaon Pethas.

III—THE UNITED PROVINCES

The Jaunsar-Bawar Pargana of the Dehra Dun District,

The portion of the Mirzapur District south of the Kaimur range.

IV—EAST PUNJAB

Spiti and Lahaul in the Kangra District.

V—BIHAR

The Ranchi and Singhbhum Districts, and the Latehar Sub-division of the Palamau District of the Chota Nagpur Division.

The Santal Paraganas District excluding Godda and Deogarh Sub-divisions.

VI—THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil and the Dhanora, Dudmala, Gewardha, Jharapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsunnid, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partapgarh (Pagara), Almond and Sonpur Jagirs of the Chhindwara District, and the portion of the Pachmarhi Jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki Zamindaris of the Durg District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

VII—ORISSA

The Ganjam Agency Tracts including Khondmals.

The Koraput District.

EIGHTH SCHEDULE [Sections 161(b) and 162(2)]

PROVISIONS AS TO THE ADMINISTRATION OF THE TRIBAL AREAS IN ASSAM

1. *Autonomous districts and autonomous regions:* (1) The tribal areas in each item of Part I of the Table appended to paragraph 19 of this Schedule for the time being included in that Part shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous

district, the Governor may, by public notification, on representation made in that behalf by such tribes, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification,—

- (a) include any area in Part I of the said Table,
- (b) create a new autonomous district,
- (c) increase the area of any autonomous district,
- (d) exclude any area from Part I of the said Table,
- (e) diminish the area of any autonomous district:

Provided that no order shall be made by the Governor under clause (b) or clause (c) of this sub-paragraph except after consideration of the report of a commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule:

Provided further that no order shall be made by the Governor under clause (d) or clause (e) of this sub-paragraph unless a resolution to that effect is passed by the District Council of the autonomous district concerned.

2. *Constitution of District Councils and Regional Councils :*

(1) There shall be a District Council for each autonomous district consisting of not less than twenty and not more than forty members of whom not less than three-fourths shall be elected on the basis of adult suffrage.

(2) The territorial constituencies for elections to each District Council shall be so delimited that as far as possible the areas inhabited by the different Scheduled Tribes of the district and the areas, if any, inhabited by other persons shall form separate constituencies :

Provided that no constituency shall be formed which has a total population of less than five hundred.

(3) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1.

(4) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (name of District)" and "the Regional Council of (name of Region)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(5) Subject to the provisions of this Schedule the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(6) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(7) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing Tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned and such

rules shall provide for—

- (a) the composition of the District Councils and Regional Councils and the allocation of seats therein ;
- (b) the delimitation of territorial constituencies for the purpose of elections to those Councils ;
- (c) the qualifications entitling persons to vote at such elections and the preparation of electoral rolls ;
- (d) the qualifications for being elected at such elections as members of such Councils ;
- (e) any other matter relating to or connected with elections or nominations to such Councils ;
- (f) the procedure and the conduct of business in the District and Regional Councils ;
- (g) the appointment of officers and staff of the District and Regional Councils.

(8) The District or the Regional Council may after its first constitution make rules with regard to the matters specified in sub-paragraph (7) of this paragraph and may also make rules regulating—

- (a) the formation of subordinate local councils or boards and their procedure and the conduct of their business ; and
- (b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be ;

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (7) of this paragraph shall have effect in respect of elections to, the officers, and staff of, and the procedure and the conduct of business in, each such Council :

Provided further that the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, of the Mikir and North Cachar Hills shall be the Chairman *ex-officio* of the District Council in respect of the territories included in items 5 and 6 respectively of Part I of the Table appended to paragraph 19 of this Schedule and shall have power for a period of six years after the first constitution of the District Council, subject to the control of the Governor to annul or modify any resolution or decision of the District Council or to issue such instructions to the District Council, as he may consider appropriate, and the District Council shall comply with every such instruction issued.

3. *Powers of the District Councils and Regional Councils to make laws: (1)* The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

- (a) the allotment, occupation or use, or the setting apart of land other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose

likely to promote the interests of the inhabitants of any village or town :

Provided that nothing in such laws shall prevent the compulsory acquisition of any land whether occupied or unoccupied for public purposes by the Province of Assam in accordance with the law for the time being in force authorising such acquisition;

- (b) the management of any forest not being a reserved forest;
- (c) the use of any canal or water-course for the purpose of agriculture;
- (d) the regulation of the practice of *jhum* or other forms of shifting cultivation;
- (e) the establishment of village or town committees or councils and their powers;
- (f) any other matter relating to village or town administration including village or town police and public health and sanitation ;
- (g) the appointment or succession of chiefs or headmen ;
- (h) the inheritance of property ;
- (i) marriage;
- (j) social customs.

(2) In this section a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation Act, 1899 or under any other law for the time being in force in the area in question.

4. *Administration of justice in autonomous districts and regions:* (1) Notwithstanding anything in this Constitution the Regional Council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to Scheduled Tribes within such region or area as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court in the province shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final.

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district, may constitute Village Councils or Courts for the trial of suits and cases other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply or those arising out of any law made under paragraph 3 of this Schedule, to the exclusion of any court in the Province, and may appoint suitable persons to be members of such Village Councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

5. *Conferment of powers under the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898 on the Regional and District Councils and on certain courts and officers for the trial of certain suits and offences:* (1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in this behalf by the Governor, or for the trial of offences punishable with death, transportation for life or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such region or district, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in this behalf by the Governor, such powers under the Code of Civil Procedure, 1908 or, as the case may be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region.

6. *Powers of the District Council to establish primary schools, etc.:* The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways in the district and in particular may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

7. *District and Regional Funds:* (1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

(2) Subject to the approval of the Governor rules may be made by the District Council and by the Regional Council for the management of the District Fund or, as the case may be, the Regional Fund, and the rules so made may prescribe the procedure to be followed in respect of payment of moneys into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

8. *Powers to assess and collect land revenue and to impose taxes:* (1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the

power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Provincial Government in assessing lands for the purpose of land revenue in the Province of Assam generally.

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on land and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

- (a) tax on professions, trades, callings and employments;
- (b) a tax on animals, vehicles and boats;
- (c) cesses on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and
- (d) cesses for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph.

9. *Licences or leases for the purpose of prospecting for, or extraction of, minerals:* (1) No licence or lease shall be granted by the Provincial Government for the purpose of prospecting for, or the extraction of, minerals in any area comprised within an autonomous district, save in consultation with the District Council for that district.

(2) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Province of Assam in respect of any area within an autonomous district as may be agreed upon between the Province of Assam and the District Council of such district shall be made over to that District Council.

(3) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (2) of this paragraph to the District Council and the decision of the Governor shall be final.

10. *Power of District Council to make regulations for the control of money-lending and trading by non-tribals:* (1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district in a manner detrimental to the interests of such tribes.

(2) Such regulations may—

- (a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;

- (b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;
- (c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in this behalf by the District Council;
- (d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council:

Provided that no such regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

11. *Publication of laws, rules and regulations made under the Schedule:* All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the Province and shall on such publication have the force of law.

12. *Application of Acts of the Federal and the Provincial Legislatures to autonomous districts and autonomous regions:* Notwithstanding anything contained in this Constitution—

- (a) no Act of the Provincial Legislature in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Provincial Legislature prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;
- (b) the Governor may, by public notification, direct that any Act of the Federal Parliament or of the Provincial Legislature to which the provisions of clause (a) of this paragraph do not apply shall not apply to an autonomous district or an autonomous region, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may with the approval of the District Council for such district or the Regional Council for such region specify in the notification if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council as the case may be.

13. *Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the Annual Financial*

Statement: The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be met from, the revenues of the Province of Assam shall be shown separately in the Annual Financial Statement of the Province to be laid before the Provincial Legislature under section 149 of this Constitution.

14. *Appointment of Commission to inquire into and report on the administration of autonomous districts:* (1) The Governor of Assam may at any time appoint a Commission to examine in particular and report on any matter specified by him relating to the administration of the autonomous districts in the Province, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts in the Province generally and in particular on—

(a) the provision of education and medical facilities and communications in such districts;

(b) the need for a new or special legislation in respect of such districts by the District or the Regional Councils; and

(c) the administration of the laws, regulations and rules made by such Councils;

and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Provincial Legislature by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Provincial Government.

(3) In allocating the business of the Provincial Government among his Ministers the Governor of Assam may place one of his Ministers specially in charge of the welfare of the autonomous districts in the Province.

15. *Annulment or suspension of acts and resolutions of the District or Regional Councils:* (1) If at any time the Governor is satisfied that an act or a resolution of a Regional Council or a District Council is likely to endanger the safety of India, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Provincial Legislature as soon as possible and the order shall, unless revoked by the Provincial Legislature, continue in force for a period of twelve months from the date on which it was so made:

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Provincial Legislature the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

(3) The functions of the Governor under this paragraph shall be exercised by him in his discretion.

16. *Dissolution of a District or Regional Council*: The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a Regional or a District Council and—

(a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

(b) subject to the previous approval of the Provincial Legislature assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under paragraph 14 or any other body considered suitable by him for a period not exceeding twelve months:

Provided that when an order under clause (a) of this paragraph has been made the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the re-constitution of the Council on fresh general election:

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of being heard by the Provincial Legislature.

17. *Application of the provisions of this Schedule to areas specified in Part II of the Table appended to paragraph 19*: (1) The Governor of Assam may—

(a) subject to the previous approval of the President by public notification apply all or any of the foregoing provisions of this Schedule to any tribal area specified in Part II of the Table appended to paragraph 19 of this Schedule or any portion of such area and thereupon such area or portion shall be administered in accordance with such provisions, and

(b) may also with like approval exclude any tribal area specified in Part II of the said Table or any portion thereof from the said Table.

(2) Until a notification is issued under sub-paragraph (1) of this paragraph in respect of any tribal area specified in Part II of the said Table or any portion of such area, the administration of such area or portion thereof, as the case may be, shall be carried on by the President through the Governor of Assam as his agent.

18. *Transitional provisions*: As soon as possible after the commencement of this Constitution the Governor of Assam shall take steps for the constitution of a District Council for each autonomous district in the Province and until a District Council is constituted under this Schedule for an autonomous district the administration of such district shall be vested in the Governor in his discretion and the following provisions shall apply to the administration of the areas within such districts instead of the provisions contained in this Schedule, namely:

(a) no Act of the Federal Parliament or of the Provincial Legislature shall apply to such area unless the Governor

by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;

(b) the Governor may make regulations for the peace and good government of such area and any regulations so made may repeal or amend any Act of the Federal Parliament or of the Provincial Legislature or any existing law which is for the time being applicable to such area. Regulations made under this clause shall be submitted forthwith to the President and until assented to by him shall have no effect;

(c) the Governor shall exercise his functions under clauses (a) and (b) of this paragraph in his discretion.

19. *Tribal areas*: The areas specified in Parts I and II of the Table below shall be the tribal areas within the Province of Assam, and any reference in the said Table to any district or administrative area shall be construed as a reference to that district or area as existing on the date of commencement of this Constitution.

TABLE

PART I

1. The Khasi & Jaintia Hills District excluding the town of Shillong.
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Sub-division of Cachar District.
6. The Mikir Hills portion of Nowgong and Sibsagar Districts excepting the mouzas of Barpathar and Sarupathar.

PART II

1. The Sadiya and Balipara Frontier Tracts.
2. The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).
3. The Naga Tribal Area.

NINTH SCHEDULE [Section 180]

LIST I—FEDERAL LEGISLATIVE LIST

[Cf. Government of India Act, 1935, Seventh Schedule, paragraph 3.]

1. The defence of the territories of the Federation and of every part thereof and generally all preparations for defence, as well as all such acts as may be conducive in times of war to its successful prosecution and after its termination to effective demobilisation.

2. Requisitioning of lands for purposes of defence including training and manoeuvres.
3. Central Intelligence Bureau.
4. Preventive detention in the territories of the Federation for reasons of State.
5. The raising, training, maintenance and control of Naval, Military and Air Forces and their employment; the strength, organisation and control of the armed forces raised and employed in Indian States.
6. Industries declared by Federal law to be necessary for the purpose of defence or for the prosecution of war.
7. Naval, Military and Air Force works.
8. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.
9. Arms, firearms, ammunitions and explosives.
10. Atomic energy and mineral resources essential to its production.
11. Foreign Affairs; all matters which bring the Federation into relation with any foreign country.
12. Diplomatic, consular and trade representation.
13. United Nations Organisation.
14. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
15. War and Peace.
16. The entering into and implementing of treaties and agreements with foreign countries.
17. Trade and commerce with foreign countries.
18. Foreign loans.
19. Citizenship, naturalization and aliens.
20. Extradition.
21. Passports and visas.
22. Foreign jurisdiction.
23. Piracies, felonies and offences against the law of nations committed on the high seas and in the air.
24. Admission into, and emigration and expulsion from, the territories of the Federation.
25. Pilgrimages to places beyond India.
26. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.
27. Import and export across customs frontiers as defined by the Federal Government.
28. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other institution financed by the Federation wholly or in part and declared by Federal law to be an institution of national importance.
29. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.
30. Airways.
31. National highways declared to be such by Federal law.
32. Shipping and navigation on inland waterways, declared by

Federal law to be Federal waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on such waterways.

33. (a) Posts and telegraphs except as respects any right of any individual Federated State subsisting at the commencement of this Constitution until such right is extinguished by agreement between the Federation and that State or is acquired by the Federation, subject always to the power of the Federal Parliament to make laws for its regulation and control;

(b) telephones, wireless, broadcasting and other like forms of communications owned or maintained by the Federation, the regulation and control of all other telephones, wireless, broadcasting and other like forms of communications;

(c) Post Office Savings Bank.

34. Federal Railways; the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

35. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation of such education and training provided by units and other agencies.

36. Admiralty jurisdiction.

37. Ports declared to be major ports by or under Federal law or existing law including their delimitation, and the constitution and powers of port authorities therein.

38. Aircraft and air navigation; provision of aerodromes; regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by units and other agencies.

39. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

40. Carriage of passengers and goods by sea or by air.

41. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal Meteorological organisations.

42. Inter-unit quarantine.

43. Federal judiciary; constitution, organisation, jurisdiction and powers of the Supreme Court, and fees taken therein.

44. Acquisition of property for the purposes of the Federation.

45. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

46. Census.

47. Offences against laws with respect to any of the matters in this list.

48. Inquiries, surveys, and statistics for the purposes of the Federation.

49. Federal Public Services and Federal Public Service Commission.

50. Industrial disputes concerning Federal employees.

51. Reserve Bank of India.

52. Property of the Federation and the revenue therefrom, but as regards property situated in a unit subject always to legislation by the unit, save in so far as Federal law otherwise provides.

53. Public debt of the Federation.

54. Currency, foreign exchange, coinage and legal tender.

55. Powers to deal with grave economic emergencies in any part of the territories of the Federation affecting the Federation.

56. Insurance.

57. Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit, but not including universities.

58. Banking.

59. Cheques, bills of exchange, promissory notes and other like instruments.

60. Patents, copyright, inventions, designs, trademarks and merchandise marks.

61. Ancient and Historical Monuments; archaeological sites and remains.

62. Establishment of standards of weight and measure.

63. Opium, so far as regards cultivation and manufacture or sale for export.

64. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.

65. Development of industries where development under Federal control is declared by Federal law to be expedient in the public interest.

66. Regulation of labour and safety in mines and oilfields.

67. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.

68. Extension of the jurisdiction of a High Court in any Province to any area outside the Province.

69. Extension of the powers and jurisdiction of members of a police force belonging to any part of a Governor's Province or a Chief Commissioner's Province to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a force belonging to any unit to railway areas outside that unit.

70. Elections to the Federal Parliament, and of the President and Vice-President and Election Commission to superintend, direct and control all elections to the Federal Parliament and to the Provincial Legislatures and to the offices of President, Vice-

President, Governor and Deputy Governor subject to the provisions of this Constitution.

71. The emoluments and allowances of the President, the salaries of the Federal Ministers and of the Chairman and Deputy Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries, allowances and privileges of the members of the Federal Parliament; the salary, allowances and the conditions of service of the Auditor-General of the Federation.

72. The enforcement of attendance of persons for giving evidence or producing documents before committees of the Federal Parliament.

73. Duties of customs including export duties.

74. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;

(c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

75. Corporation tax.

76. State lotteries.

77. Migration from one unit to another.

78. Jurisdiction and powers of all courts, other than the Supreme Court, with respect to any of the matters in this List.

79. Taxes on income other than agricultural income.

80. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

81. Duties in respect of succession to property other than agricultural land.

82. Estate duty in respect of property other than agricultural land.

83. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

84. Terminal taxes on goods or passengers, carried by railway or air; taxes on railway fares and freights.

85. The development of inter-unit waterways for purposes of flood control, irrigation, navigation and hydro-electric power.

86. Inter-unit trade and commerce.

87. Fishing and fisheries beyond territorial waters.

88. Manufacture and distribution of salt by Federal agencies; regulation and control of manufacture and distribution of salt by other agencies.

89. Fees in respect of any of the matters in this List, but not including fees taken in any court.

90. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

LIST II—PROVINCIAL LEGISLATIVE LIST

1. Public order (but not including the use of naval, military or air forces in aid of the civil power); the administration of justice;

constitution and organisation of all courts, except the Supreme Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this List; procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.

5. Public debt of the Province.

6. Provincial Public Services and Provincial Public Service Commissions.

7. Works, lands and buildings vested in or in the possession of the Province.

8. Compulsory acquisition of land except for the purposes of the Federation.

9. Libraries, museums and other similar institutions controlled or financed by the Province.

10. Elections to the Provincial Legislature and of the Governors and Deputy Governors of the Provinces subject to the provisions of paragraph 70 of List I.

11. The emoluments and allowances of the Governors and Deputy Governors of the Provinces, salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the Chairman and Deputy Chairman thereof, the salaries, allowances and privileges of the members of the Provincial Legislature and the enforcement of attendance of persons for giving evidence or producing documents before committees of the Provincial Legislature.

12. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

13. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

14. Pilgrimages, other than pilgrimages to places beyond India.

15. Burials, and burial and burning grounds.

16. Education including universities other than those specified in paragraph 29 of List I.

17. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

18. Water, that is to say, water supplies; irrigation and canals, drainage and embankments, water storage and water power.

19. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases; improvement of stock and prevention of animal diseases; veterinary training and practice, pounds and the prevention of cattle trespass.

20. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates, treasure trove.

21. Forests.

22. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under Federal control.

23. Fisheries.

24. Protection of wild birds and wild animals.

25. Gas and gasworks.

26. Trade and commerce within the Province; markets and fairs.

27. Money-lending and money-lenders.

28. Inns and inn-keepers.

29. Production, supply and distribution of goods; development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods.

31. Weights and measures except establishment of standards.

32. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

33. Relief of the poor; unemployment.

34. The incorporation, regulation, and winding-up of corporations not being corporations specified in List I, or universities; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies.

35. Charities and charitable institutions; charitable and religious endowments.

36. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

37. Betting and gambling.

38. Offences against laws with respect to any of the matters in this List.

39. Inquiries and statistics for the purpose of any of the matters in this List.

40. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

41. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in the territories of the Federation :

(a) alcoholic liquors for human consumption ;

- (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
- (c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
- 42. Taxes on agricultural income.
- 43. Taxes on lands and buildings, hearths and windows.
- 44. Duties in respect of succession to agricultural land.
- 45. Estate duty in respect of agricultural land.
- 46. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Parliament relating to mineral development.
- 47. Capitation taxes.
- 48. Taxes on professions, trades, callings and employment.
- 49. Taxes on animals and boats.
- 50. Taxes on the sale of goods and on advertisements.
- 51. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars.
- 52. Taxes on the consumption or sale of electricity.
- 53. Cesses on the entry of goods into a local area for consumption, use or sale therein.
- 54. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
- 55. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
- 56. Dues on passengers and goods carried on inland waterways.
- 57. Tolls.
- 58. Fees in respect of any of the matters in this List, but not including fees taken in any court.

LIST III—CONCURRENT LEGISLATIVE LIST

- 1. Criminal Law, including all matters included in the Indian Penal Code at the date of commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of the naval, military and air forces in aid of the civil power.
- 2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.
- 3. Removal of prisoners and accused persons from one unit to another unit.
- 4. Civil Procedure, including the Law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Constitution; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands including arrears of land revenue and sums recoverable as such, arising outside that Province.
- 5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.
- 6. Marriage and divorce; infants and minors; adoption.

7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural; and registration of deeds and documents.
9. Trusts and Trustees.
10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency.
13. Administrators-general and official trustees.
14. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
15. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List II.
16. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
17. Legal, medical and other professions.
18. Newspapers, books and printing presses.
19. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
20. Poisons and dangerous drugs.
21. Mechanically propelled vehicles.
22. Boilers.
23. Prevention of cruelty to animals.
24. Vagrancy; nomadic and migratory tribes.
25. Factories.
26. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.
27. Unemployment and social insurance.
28. Trade union; industrial and labour disputes.
29. The prevention of the extension from one unit to another of infectious or contagious diseases or pests affecting men, animals or plants.
30. Electricity.
31. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to Federal waterways.
32. The sanctioning of cinematograph films for exhibition.
33. Persons subjected to preventive detention under Federal authority.
34. Economic and social planning.
35. Inquiries and statistics for the purpose of any of the matters in this List.
36. Fees in respect of any of the matters in this List, but not including fees taken in any court.

TENTH SCHEDULE

[Section 231(1) (uu)]

SCHEDULED TRIBES

PART I—MADRAS

[Cf. Govern-
ment of
India (Provin-
cial Legislative
Assemblies)
Order, 1936,
Thirteenth
Schedule.]

1. Bagata.
2. Bottadas . . . Bodo Bhottada, Muria Bhottada and Sano Bhottada.
3. Bhumias . . . Bhuri Bhumia and Bodo Bhumia.
4. Bissoy . . . Barangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoriya, Kollai, Konde, Paranga, Penga Jodia, Sodo Jodia and Takora.
5. Dhakkada.
6. Dombs . . . Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telaga and Ummia.
7. Gadabas . . . Boda Gadaba, Ceruam Gadaba, Franji Gadaba, Jodia Gadaba, Olaro Gadaba, Pangi Gadaba and Paranga Gadaba.
8. Ghasis . . . Boda Ghasis and San Ghasis.
9. Gondi . . . Modya Gond and Rajo Gond.
10. Goundus . . . Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.
11. Kosalya Goudus . Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and Pullosoriya Goudus.
12. Magatha Goudus . Bernia Goudu, Boodo Magatha, Dongayath Goudu, Ladya Goudu, Ponna Magatha and Sana Magatha.
13. Serithi Goudus.
14. Holva.
15. Jadapus.
16. Jatapus.
17. Kammaras.
18. Khattis-Khatti, Kommaro and Lohara.
19. Kodu.
20. Kommar.
21. Konda Dhoras.
22. Konda Kapus.
23. Kondareddis.
24. Kondhs . . . Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.
25. Kotia . . . Bartikar, Bentho Oriya, Dhulia or Dulia, Holva Paiko, Putiya, Sanrona and Sidho Paiko.
26. Koya or Gound with its sub-sects, Raja of Rasha Koyas, Lingadhari Koyas (ordinary) and Kottu Koyas.
27. Madigas.
28. Malas or Agency Malas or Valmikies.
29. Malis . . . Worchia Malis, Paiko Malis and Pedda Malis.

30. Maune.
31. Manna Dhora.
32. Mukha Dhora Nooka Dhora.
33. Muli or Muliya.
34. Muria.
35. Ojulus or Metta Komsalies.
36. Omanaito.
37. Paigarapu.
38. Palasi.
39. Palli.
40. Pentias.
41. Porjas Bodo, Bonda, Daruva, Didua, Jodia,
Mundili, Pengu Pydi and Saliya.
42. Reddi Dhoras.
43. Relli or Sachandi.
44. Ronas.
45. Savaras Kapu Savaras, Khutto Savaras and Maliya
Savaras.
46. The residents of the Laccadive, Minicoy and Amindivi Islands.

PART II—BOMBAY

- | | |
|-------------------------|---|
| 1. Barda. | 14. Naikda or Nayak. |
| 2. Bavacha. | 15. Pardhi, including Advichin-
cher or Phanse Pardhi. |
| 3. Bhil. | 16. Patelia. |
| 4. Chodhra. | 17. Pomla. |
| 5. Dhanka. | 18. Powara. |
| 6. Dhodia. | 19. Rathawa. |
| 7. Dubla. | 20. Tadvi Bhili. |
| 8. Gamit or Gamta. | 21. Thakur. |
| 9. Gond. | 22. Valvai. |
| 10. Kathodi or Katkari. | 23. Varli. |
| 11. Konkna. | 24. Vasava. |
| 12. Koli Mahadeb. | |
| 13. Mavchi. | |

PART III—WEST BENGAL

- | | |
|------------|---|
| 1. Botia. | 7. Mro. |
| 2. Chakma. | 8. Oraon. |
| 3. Kuki. | 9. Santal. |
| 4. Lepcha. | 10. Tippera. |
| 5. Munda. | 11. Any other tribe notified by the
Provincial Government. |
| 6. Magh. | |

PART IV—THE UNITED PROVINCES

- | | |
|-------------|--|
| 1. Bhuinya. | 6. Kol. |
| 2. Baiswar. | 7. Ojha. |
| 3. Baiga. | 8. Any other tribe notified by the
Provincial Government. |
| 4. Gond. | |
| 5. Kharwar. | |

PART V—EAST PUNJAB

The Tibetans in Spiti and Lahaul in the Kangra District.

PART VI—BIHAR

(a) A resident of the Province belonging to any of the following tribes :

- | | |
|-----------------|---------------------|
| 1. Asur. | 17. Kharia. |
| 2. Banjara. | 18. Kharwar. |
| 3. Bathudi. | 19. Khetauri. |
| 4. Bentkar. | 20. Khond. |
| 5. Binjhia. | 21. Kisan. |
| 6. Birhor. | 22. Koli. |
| 7. Birjia. | 23. Kora. |
| 8. Chero. | 24. Korwa. |
| 9. Chik Baraik. | 25. Mahli. |
| 10. Gadaba. | 26. Mal Paharia. |
| 11. Ghatwar. | 27. Munda. |
| 12. Gond. | 28. Oraon. |
| 13. Gorait. | 29. Parhiya. |
| 14. Ho. | 30. Santal. |
| 15. Juang. | 31. Sauria Paharia. |
| 16. Karmali. | 32. Savar. |
| | 33. Tharu. |

(b) A resident in any of the following districts or police stations, that is to say, the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas, and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahabhum, Patamda Banduan and Manbazar in the district of Manbhum, belonging to any of the following tribes :

- | | |
|------------|------------|
| 1. Bauri. | 5. Ghasi. |
| 2. Bhagta. | 6. Pan. |
| 3. Bhuiya. | 7. Rajwar. |
| 4. Bhumij. | 8. Turi. |

(c) A resident in the Dhanbad sub-division or in any of the following police stations in the Manbhum District, that is to say, Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para, Chas, Chandan-kiari and Kashipur, belonging to the Bhumij tribe.

PART VII—THE CENTRAL PROVINCES AND BERAR

- | | |
|--------------------|---------------|
| 1. Gond. | 11. Koli. |
| 2. Kawar. | 12. Bhattra. |
| 3. Maria. | 13. Baiga. |
| 4. Muria. | 14. Kolam. |
| 5. Halba. | 15. Bhil. |
| 6. Pardhan. | 16. Bhuinhar. |
| 7. Oraon. | 17. Dhanwar. |
| 8. Binjhwar. | 18. Bhaina. |
| 9. Andh. | 19. Parja. |
| 10. Bharia-Bhumia. | 20. Kamar |

- | | |
|---------------|-------------------------|
| 21. Bhunjia. | 29. Majhwar. |
| 22. Nagarchi. | 30. Kharia. |
| 23. Ojha. | 31. Saunta. |
| 24. Korku. | 32. Kondh. |
| 25. Kol. | 33. Nihal. |
| 26. Nagasia. | 34. Birhul (or Birhor). |
| 27. Sawara. | 35. Rautia. |
| 28. Korwa. | 36. Pando. |

PART VIII—ASSAM

The following tribes and communities :

- | | |
|--------------------------|---|
| 1. Kachari. | 10. Abor. |
| 2. Boro or Boro-Kachari. | 11. Mishmi. |
| 3. Rabha. | 12. Daffa. |
| 4. Miri. | 13. Singpho. |
| 5. Lalung. | 14. Khampti. |
| 6. Mikir. | 15. Any Naga or Kuki tribe. |
| 7. Garo. | 16. Any other tribe or community notified by the Provincial Government. |
| 8. Hajong. | |
| 9. Deori. | |

PART IX—ORISSA

(a) A resident of the Province belonging to any of the following tribes :

- | | |
|-----------------|--------------------|
| 1. Bagata. | 11. Saora (Savar). |
| 2. Banjari. | 12. Oraon. |
| 3. Chenchu. | 13. Santal. |
| 4. Gadaba. | 14. Kharia. |
| 5. Gond. | 15. Munda. |
| 6. Jatapu. | 16. Banjara. |
| 7. Khond (Kond) | 17. Binjhia. |
| 8. Konda-Dora. | 18. Kisan. |
| 9. Koya. | 19. Koli. |
| 10. Paroja. | 20. Kora. |

(b) A resident of any of the following areas, that is to say, the Koraput and Khondmals Districts and the Ganjam Agency belonging to either of the following tribes:

1. Dom or Dombo.
2. Pan or Pano.

(c) A resident of the Sambalpur District belonging to any of the following tribes :

- | | |
|------------|-----------------|
| 1. Bauri. | 4. Ghasi. |
| 2. Bhuiya. | 5. Turi. |
| 3. Bhumij. | 6. Pan or Pano. |

ELEVENTH SCHEDULE

[Section 231(2)]

SCHEDULED CASTES

PART I—MADRAS

[Cf. Govern-
ment of India
(Scheduled
Castes) Order,
1936.]

Scheduled Castes throughout the Province:

Adi-Andhra	Kudubi
Adi-Dravida	Kuravan
Adi-Karnataka	Kurichchan
Ajila	Kuruman
Aranadan	Madari
Arunthuthiyar	Madiga
Baira	Maila
Bakuda	Mala
Bandi	Mala Dasu
Bariki	Malasar
Battada	Matangi
Bavuri	Mavilan
Bellara	Moger
Byagari	Muchi
Chachati	Mundala
Chakkilyian	Nalakeyava
Chalavadi	Nayadi
Chamar	Pagadai
Chandala	Paidi
Cheruman	Painda
Dandasi	Paky
Devendrakulathan	Pallan
Dombo	Pambada
Ghasi	Pamidi
Godagali	Panchama
Godari	Paniyan
Godda	Pano
Gosangi	Panniandi
Haddi	Paraiyan
Hasla	Paravan
Holeya	Pulayan
Jaggali	Puthirai Vannan
Jambuvulu	Raneyar
Kadan	Relli
Kalladi	Samagara
Kanakkan	Samban
Karimpalan	Sapari
Kattunayakan	Semman
Kodalo	Thoti
Koosa	Tiruvalluvar
Koraga	Valluvan
Kudiya	Valmiki
Kudumban	Vettuvan

PART II—BOMBAY

Scheduled Castes—

(1) Throughout the Province :

Asodi	Kolcha, or Kolgha
Bakad	Koli Dhor
Bhambi	Lingader
Bhangi	Madig, or Mang
Chakrawadya-Dasar	Mahar
Chalvadi	Mang Garudi
Chambhar, or Mochigar, or Samagar	Meghval, or Menghwar
Chena-Dasar	Mini Madig
Chuhar, or Chuhra	Mukri
Dakaleru	Nadia
Dhed	Shenva, or Shindhava
Dhegu-Megu	Shingday, or Shingadya
Dhor	Sochi
Garode	Timali
Halleer	Turi
Halsar, or Haslar, or Hulsavar	Vankar
Holaya	Vitholia
Khalpa	

(2) Throughout the Province except in the Ahmedabad, Kaira, Broach and Panch Mahals and Surat districts—Mochi.

(3) In the Kanara district—Kotegar.

PART III—WEST BENGAL

Scheduled Castes throughout the Province:

Agariya	Hadi
Bagdi	Hajang
Bahelia	Halalkhor
Baiti	Hari
Bauri	Ho Kaibartta
Bediya	Jaliah
Beldar	Jhalo Malo, or Malo
Berua	Kadar
Bhatiya	Kan
Bhuimali	Kandh
Bhuiya	Kandra
Bhumij	Kaora
Bind	Kapuria
Binjhia	Karenga
Chamar	Kastha
Dhenuar	Kaur
Dhoba	Khaira
Doai	Khatik
Dom	Koch
Dosadh	Konai
Gar	Konwar
Ghasi	Kora
Gonrhi	Kotal

Lalbegi	Nat
Lodha	Nuniya
Lohar	Oraon
Mahar	Paliya
Mahli	Pan
Mal	Pasi
Mallah	Patni
Malpahariya	Pod
Mech	Rabha
Mehtor	Rajbanshi
Muchi	Rajwar
Munda	Santal
Musahar	Sunri
Nagesia	Tiyar
Namasudra	Turi

PART IV—THE UNITED PROVINCES

Scheduled Castes—

(1) Throughout the Province :

Agariya	Gharami
Aheriya	Ghasiya
Badi	Gual
Badhik	Habura
Baheliya	Hari
Bajaniya	Hela
Bajgi	Kalabaz
Balahar	Kanjar
Balmiki	Kapariya
Banmanus	Karwal
Bansphor	Khairaha
Barwar	Kharot
Basor	Kharwar (except Benbansi)
Bawariya	Khatik
Beldar	Kol
Bengali	Korwa
Beriya	Lalbegi
Bhantu	Majhwar
Bhuiya	Nat
Bhuyiar	Pankha
Boriya	Parahiya
Chamar	Pasi
Chero	Patari
Dabgar	Rawat
Dhangar	Saharya
Dhanuk (Bhangi)	Sanaurhiya
Dharkar	Sansiya
Dhobi	Shilpkar
Dom	Tharu
Domar	Turaiha

(2) Throughout the Province except in the Agra, Meerut and Rohilkhand divisions—Kori.

PART V—EAST PUNJAB

Scheduled Castes throughout the Province:

Ad Dharmis	Sansi
Bawaria	Sarera
Chamar	Marija, or Marecha
Chuhra, or Balmiki	Bangali
Dagi and Koli	Barar
Dumna	Bazigar
Od	Bhanjra
Chanal	Nat
Dhanak	Pasi
Gagra	Perna
Gandhila	Sapela
Khatik	Sirkiband
Kori	Meghs
	Ramdasis

PART VI—BIHAR

Scheduled Castes—

(1) Throughout the Province:

Chamar	Kanjar
Chaupal	Kurariar
Dhobi	Lalbegi
Dusadh	Mochi
Dom	Musahar
Halalkhor	Nat
Hari	Pasi

(2) In the Patna and Tirhut divisions and the Bhagalpur, Monghyr, Palamau and Purnea districts:

Bauri	Ghasi
Bhogta	Pan
Bhuiya	Rajwar
Bhumij	Turi

(3) In the Dhanbad sub-division of the Manbhum district and in the Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para, Chas, Chandan-Kiari and Kashipur police stations of Manbhum Sadar sub-division (excluding municipal areas), and the Purulia and Raghunathpur municipalities:

Bauri	Pan
Bhogta	Rajwar
Bhuiya	Turi
Ghasi	

PART VII—THE CENTRAL PROVINCES AND BERAR

<i>Scheduled Castes</i>	<i>Localities</i>
Basor, or Burud . . .	} Throughout the Province.
Chamar . . .	
Dom . . .	
Ganda . . .	
Mang . . .	
Mehtar, or Bhangi . . .	
Mochi . . .	
Satnami . . .	
Audhelia . . .	In the Bilaspur District.
Bahna . . .	In the Amraoti District.
Balahi, or Balai . . .	In the Berar division and the Balaghat, Bhandara, Betul, Chanda, Chhindwara, Hoshangabad, Jubbulpore, Mandla, Nagpur, Nimar, Saugor and Wardha districts.
Bedar . . .	In the Akola, Amraoti and Buldana districts.
Chadar . . .	In the Bhandara and Saugor districts.
Chauhan . . .	In the Durg district.
Dahayat . . .	In the Damoh sub-division of the Saugor district.
Dewar . . .	In the Bilaspur, Durg and Raipur districts.
Dhanuk . . .	In the Saugor district, except in the Damoh sub-division thereof.
Dhimar . . .	In the Bhandara district.
Dhobi . . .	In the Bhandara, Bilaspur, Raipur and Saugor districts, and the Hoshangabad and Seoni-Malwa tahsils of the Hoshangabad district.
Dohor . . .	In the Berar division, and the Balaghat, Bhandara, Chanda, Nagpur and Wardha districts.
Ghasia . . .	In the Berar division and in the Balaghat, Bhandara, Bilaspur, Chanda, Durg, Nagpur, Raipur and Wardha districts.
Holiya . . .	In the Balaghat and Bhandara districts.
Jangam . . .	In the Bhandara district.
Kaikari . . .	In the Berar division, and in Bhandara, Chanda, Nagpur and Wardha districts.
Katia . . .	In the Berar division, in the Balaghat, Betul, Bhandara, Bilaspur, Chanda, Durg, Nagpur, Nimar, Raipur and Wardha districts, in the Hoshangabad and Seoni-Malwa tahsils of the Hoshangabad district, in the Chhindwara district, except in the Seoni sub-division thereof, and in the Saugor district, except in the Damoh sub-division thereof.
Khangai . . .	In the Bhandara, Buldana and Saugor districts and the Hoshangabad and Seoni-Malwa tahsils of the Hoshangabad district.

Khatik	.	.	.	In the Berar division, in the Balaghat, Bhandara, Chanda, Nagpur and Wardha districts, in the Hoshangabad tahsil of the Hoshangabad district, in the Chhindwara district, except in the Seoni sub-division thereof, and in the Saugor district, except in the Damoh sub-division thereof.
Koli	.	.	.	In the Bhandara and Chanda districts.
Kori	.	.	.	In the Amraoti, Balaghat, Betul, Bhandara, Buldana, Chhindwara, Jubbulpore, Mandla, Nimar, Raipur and Saugor districts, and in the Hoshangabad district, except in the Harda and Sohagpur tahsils thereof.
Kumhar	.	.	.	In the Bhandara and Saugor districts and the Hoshangabad and Seoni-Malwa tahsils of the Hoshangabad district.
Madgi	.	.	.	In the Berar division, and in the Balaghat, Bhandara, Chanda, Nagpur and Wardha districts.
Mala	.	.	.	In the Balaghat, Betul, Chhindwara, Hoshangabad, Jubbulpore, Mandla, Nimar and Saugor districts.
Mehra, or Mahar	.	.	.	Throughout the Province, except in the Harda and Sohagpur tahsils of the Hoshangabad district.
Nagarchi	.	.	.	In the Balaghat, Chhindwara, Mandla, Nagpur and Raipur districts.
Ojha	.	.	.	In the Balaghat, Bhandara and Mandla districts and the Hoshangabad tahsil of the Hoshangabad district.
Panka	.	.	.	In the Berar division, in the Balaghat, Bhandara, Bilaspur, Chanda, Durg, Nagpur, Raipur, Saugor and Wardha districts and in the Chhindwara district, except in the Seoni sub-division thereof.
Pardhi	.	.	.	In the Narsinghpur sub-division of the Hoshangabad district.
Pradhan	.	.	.	In the Berar division, in the Bhandara, Chanda, Nagpur, Nimar, Raipur and Wardha districts and in the Chhindwara district, except in the Seoni sub-division thereof.
Rujjhar	.	.	.	In the Sohagpur tahsil of the Hoshangabad district.

PART VIII—ASSAM

Scheduled Castes—

(1) In the Assam Valley:

Namasudra	Lalbegi
Kaibartta	Mehtar, or Bhengi
Bania, or Brittil-Bania	Bansphor
Hira	

(2) In the Surma Valley:

Mali, or Bhuimali	Patni
Dhupi, or Dhobi	Namasudra
Dugla, or Dholi	Kaibartta, or Jaliya

Jhalo and Malo	Lalbegi
Mahara	Mehtar, or Bhangi
Sutradhar	Bansphor
Muchi	

PART IX—ORISSA

Scheduled Castes—

(1) Throughout the Province:

Adi-Andhra	Kela
Audheia	Kodalo
Bariki	Madari
Basor or Burud	Madiga
Bavuri	Mahuria
Chachati	Mala
Chamar	Mang
Chandala	Mangan
Dandasi	Mehra, or Mahar
Dewar	Mehtar, or Bhangi
Dhoba, or Dhobi	Mochi, or Muchi
Ganda	Paidi
Ghusuria	Painda
Godagali	Pamidi
Godari	Panchama
Godra	Panka
Gokha	Relli
Haddi, or Hari	Sapari
Irika	Satnami
Jaggali	Siyal
Kandra	Valamiki
Katia	

(2) Throughout the Province except in the Khondmals district, the district of Sambalpur, and the areas transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936, from the Vizagapatam and Ganjam Agencies in the Presidency of Madras :

Pan, or Pano.

(3) Throughout the Province except in the Khondmals district and the areas so transferred to Orissa from the said Agencies :

Dom, or Dombo.

(4) Throughout the Province except in the district of Sambalpur :

Bauri	Bhumij	Turi
Bhuiya	Ghasi, or Ghasia	

(5) In the Nawapara sub-division of the district of Sambalpur :

Kori	Nagarchi	Pradhan
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Explanation : Any reference in this Schedule to any division, district, sub-division, police station, tahsil or municipality shall be construed as a reference to that division, district, sub-division, police station, tahsil or municipality as existing on the date of commencement of this Constitution.

TWELFTH SCHEDULE

[Cf. Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, First Schedule.]

[Paragraphs 51 (c), 57, 63 and 64 of the Fourth Schedule, Paragraphs 51(c), 57, 62 and 63 of the Sixth Schedule and the Thirteenth Schedule]

CORRUPT PRACTICES

PART I

1. Bribery, that is to say, any gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing—

- (a) a person to stand or not to stand as, or to withdraw from being, a candidate at an election; or
- (b) an elector to vote or refrain from voting at an election or as a reward to—
 - (i) a person for having so stood or not stood, or for having withdrawn his candidature; or
 - (ii) an elector for having voted or refrained from voting.

For the purposes of this paragraph the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money, and it includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at, or for the purpose of, any election and duly entered in the return of election expenses prescribed by Part IV of the Fourth Schedule or, as the case may be, Part IV of the Sixth Schedule to this Constitution.

2. Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of any electoral right :

Provided that—

- (a) without prejudice to the generality of the provisions of this paragraph, any such person as is referred to therein who—
 - (i) threatens any candidate or elector, or any person in whom a candidate or elector is interested, with any injury of any kind; or
 - (ii) induces or attempts to induce a candidate or elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure,
 shall be deemed to interfere with the free exercise of the electoral right of that candidate or elector within the meaning of this paragraph ;
- (b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this paragraph.

3. The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

4. The removal of a voting paper from the polling station during polling hours by any person with the connivance of a candidate or his agent.

5. The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature or withdrawal of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

6. The incurring or authorising by a candidate or his agent of expenditure, or the employment of any person by a candidate or his agent in contravention of the provisions of the Fourth Schedule to this Constitution or of any Act of the Federal Parliament or of any rule made under paragraph 71 of the said Fourth Schedule in the case of an election to the Federal Parliament and of the provisions of the Sixth Schedule to this Constitution or of any Act of the Provincial Legislature or of any rule made under paragraph 70 of the said Sixth Schedule in the case of an election to the Provincial Legislature.

PART II

1. Any act specified in Part I of this Schedule, when done by a person who is not a candidate or his agent or a person acting with the connivance of a candidate or his agent.

2. The application by a person at an election for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or for a voting paper in his own name when, by reason of the fact that he has already voted in the same or some other constituency, he is not entitled to vote.

3. The receipt of, or agreement to receive, any gratification whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw his candidature.

For the purposes of this paragraph the term "gratification" has the same meaning as it has for the purposes of paragraph 1 of Part I of this Schedule.

4. The making of any return of election expenses which is

false in any material particular, or the making of a declaration verifying any such return.

PART III

1. The incurring or authorisation by any person other than a candidate or his agent of expenses on account of holding any public meeting, or upon any advertisement, circular or publication or in any other way whatsoever, for the purpose of promoting or procuring the election of the candidate, unless he is authorised in writing so to do by the candidate.

2. The hiring, using or letting, as a committee room or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

3. The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

Explanation: (1) For the purposes of the Fourth Schedule to this Constitution and in relation to any election to either House of the Federal Parliament, except where the context otherwise requires, the expressions "agent", "candidate", "electoral right" and "returned candidate" in this Schedule have the meanings respectively assigned to them in paragraph 51 of the said Schedule and the expression "election" in this Schedule has the meaning assigned to that expression in paragraph 70 of that Schedule.

(2) For the purposes of the Sixth Schedule to this Constitution and in relation to any election to the Provincial Legislature, except where the context otherwise requires, the expressions "agent", "candidate", "electoral right" and "returned candidate" in this Schedule have the meanings respectively assigned to them in paragraph 51 of the said Schedule and the expression "election" in this Schedule has the meaning assigned to that expression in paragraph 69 of that Schedule.

THIRTEENTH SCHEDULE

[Fourth Schedule, Paragraph 62 and Sixth Schedule, Paragraph 61]

[Cf. Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936, Second Schedule.]

DISQUALIFICATIONS FOR MEMBERSHIP OF THE FEDERAL PARLIAMENT AND THE PROVINCIAL LEGISLATURES

Elections	Offence or corrupt practice	Period of disqualification
1	2	3
Elections to which Chapter IXA of the Indian Penal Code applies.	Offences under Chapter IXA of the Indian Penal Code punishable with imprisonment for a term exceeding six months.	Six years from the date of conviction.

1	2	3
Elections as defined in paragraph 70 of the Fourth Schedule to this Constitution.	Corrupt practices specified in Parts I and II of the Twelfth Schedule to this Constitution.	Six years from the date of the report of the tribunal holding the inquiry.
Elections as defined in the said paragraph 70 other than elections by the members of the House of the People or the Legislature of any unit to fill seats in the Council of States.	Corrupt practices specified in Part III of the Twelfth Schedule to this Constitution.	Four years from the date of the report of the tribunal holding the inquiry.
Elections as defined in paragraph 69 of the Sixth Schedule to this Constitution.	Corrupt practices specified in Parts I and II of the Twelfth Schedule to this Constitution.	Six years from the date of the report of the tribunal holding the inquiry.
Elections as defined in the said paragraph 69 other than elections by the members of a Provincial Legislative Assembly to fill seats in the Provincial Legislative Council.	Corrupt practices specified in Part III of the Twelfth Schedule to this Constitution.	Four years from the date of the report of the tribunal holding the inquiry.
Elections under the Government of India Act, 1935, or under the provisions of the Government of India Act as were set out in the Ninth Schedule to the Government of India Act, 1935.	Any corrupt practice within the meaning of the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order, 1936 or of the Electoral Rules under the Government of India Act relating to the election in question, as the case may be.	Such period commencing on the date of the report of the Commissioners under the said Order or, as the case may be, the Electoral Rules relating to the election in question as is the maximum period of disqualification specified in the said Order for voting at any election defined in paragraph 3 of Part I of that Order or specified in those Rules for inclusion in electoral rolls thereunder.

(II) A NOTE ON CERTAIN CLAUSES BY THE CONSTITUTIONAL
ADVISER

October 7, 1947

Clauses 4 to 7 deal with citizenship. Clause 5 deals with persons born before the date of commencement of the constitution and clause 6 with those born afterwards.

Clause 5 has been drafted in very wide terms so as to make provision not only for ordinary cases but also for the special case of the refugees that have been pouring into India. Sub-clause (a) confers citizenship upon every person who, or either of whose parents, or any of whose grandparents, was born in the territories initially included within the Federation. Although the laws of some States confer nationality upon descendants of their nationals without any limit as to the number of generations, the best authorities consider that there should be a limit and that it would be reasonable to stop at the second generation. The draft sub-clause does not therefore go beyond the grandchildren of persons born in India.

We have, however, to cover the case of those persons who and whose parents and grandparents may have been born in Pakistan and who have now been compelled by circumstances beyond their control to migrate to India. Such persons are not covered by sub-clause (a). Sub-clause (b) accordingly provides that every person who, at the date of commencement of the new constitution, has his domicile in India will be a citizen of the Federation. The proviso to the explanation under clause 5 prescribes a specially easy mode of acquiring a domicile in India for the purposes of the clause without prejudice to any other mode. All that the immigrant has to do is to reside in India for a month and then to make and deposit in a prescribed office a written declaration of his desire to acquire a domicile in India. These steps should be taken before the commencement of the new constitution. To make it quite clear that this special mode of acquiring domicile is without prejudice to any other mode, we might insert the word "and without prejudice to any other mode of acquiring a domicile" after the words "said Act" in the proviso to the explanation. In order to discourage double citizenship and prevent divided loyalties, clause 6A has been inserted. The effect of this clause is that any person who is under any acknowledgement of allegiance or adherence to a foreign power or is a subject or citizen of a foreign power is disqualified for membership of any legislature in India whether Central or Provincial. The provision is on the lines of section 44(i) of the Commonwealth of Australia Act.

Clause 6 deals with persons who may be born after the commencement of the new constitution. This clause is on the lines of the corresponding provision in the British Nationality and Status of Aliens Act, 1914.

Clause 7 emphasizes the unqualified power of the Federal Parliament to make further provision for regulating citizenship so that, if either clause 5 or clause 6 is regarded as going too far, it will be open to the Federal Parliament to narrow the circle of citizenship within any desired limits. The Federal Parliament will also have unrestricted power to make provision for avoiding or terminating double citizenship.

Clauses 8 to 41 deal with fundamental rights and directive principles of State policy. The directive principles of State policy are contained in

clauses 31 to 41. They are not cognizable by the ordinary courts of law. Clauses 8 to 30 deal with fundamental rights of which the courts may take cognizance and indeed clause 28 emphasizes that the right to move the Supreme Court by appropriate proceedings for the enforcement of fundamental rights is guaranteed by the Constitution.

There is here a danger which ought to be pointed out. It may occasionally be necessary for the State for the proper discharge of one of its fundamental duties, *e.g.*, the duty prescribed in clause 39 (to raise the standard of living and to improve public health), to invade private rights. In other words, there may be a conflict between the directive principles of State policy and one of the rights or freedoms of the individual guaranteed in the fundamental rights. The latter, being justiciable under the Constitution, will in effect prevail over the former, which are not justiciable. That is to say, the private right may over-ride the public weal. For example, it may be necessary in the interests of public health for the State to take possession of unhealthy slums and demolish them. Clause 25 may be an obstacle in the way of such action, unless adequate compensation is paid to the slum owner. In England a local authority can in certain circumstances enter and demolish an insanitary house without payment of compensation and can even sell the materials in order to cover demolition expenses (sec. 13 of the Housing Act, 1936).

Plans for the nationalization of mineral resources, required by clause 32, may also be similarly hindered. These are only two illustrations of what may happen.

It is therefore a matter requiring careful consideration whether the constitution might not expressly provide that no law made and no action taken by the State in the discharge of its duties under Chapter III of Part III (which deals with directive principles of State policy) shall be invalid merely for reason of its contravening the provisions of Chapter II of the same Part (which deals with fundamental rights); clause 9 (2) of the draft would then need consequential modification.

Clause 16: The word "liberty" might be construed very widely unless qualified. Hence the insertion of "personal"*.

Clause 17: The phrase "if between the citizens of the Federation" might create needless complication in practice. It would be very inconvenient if there were internal trade barriers across which free trade would be allowed if and only if it was between the citizens of the Federation; for, we should then have to devise some means of ascertaining the nationality of the consignor and the consignee. It may therefore be better to omit the phrase altogether.

Clause 23: It is for consideration whether this clause should be confined

*For example, even price-control might be regarded as interference with liberty (of contract between buyer and seller).

to schools or extended to all educational institutions. As worded at present, it is confined to schools.

Clause 24 : The term 'minorities' is not defined in the constitution and indeed having regard to the fact that under sub-clause (2) of this clause minorities may be based on religion, community or language, it would be difficult to frame a comprehensive definition. At the same time to leave a vague justiciable right to undefined minorities is unsatisfactory. The provision is vague because even the declaration of a particular language as the national language might be said to prejudice the interests of the "minorities" whose mother tongue is different. In view of these difficulties it should be considered whether the right conferred by this clause should be made justiciable at all.

Clause 26 : In sub-clause (2) the words "save as provided in section 132 of the Indian Evidence Act, 1872, as in force at the commencement of this Constitution" are new. Without these words, the clause may lead to failure of justice, particularly in criminal cases. The rule contained in section 132 of the Indian Evidence Act deprives a witness of the right of refusing to answer incriminating questions, but provides that, if a witness is compelled by court to answer, the incriminating answers will not subject him to any criminal charge except a prosecution for giving false evidence. This rule has the merit of securing the benefit of his answer to the cause of justice and the benefit of the protection against self-incrimination to the witness.

Clause 28 : This should be read with clause 97. The wisdom of these provisions has been questioned in a note in the *Calcutta Weekly Notes* of June 6, 1947, as well as in an article in the *Federalist* of August 15, 1947, and the position therefore requires careful re-examination. Directions in the nature of *habeas corpus* can be issued by the High Courts in British India under section 491 of the Criminal Procedure Code. Under this section, any High Court may, whenever it thinks fit, direct among other things that a person legally or improperly detained in public or private custody within the limits of the Court's appellate criminal jurisdiction be set at liberty. It is therefore open to any party to apply to the High Court for this purpose. If the application fails, the applicant can appeal to the Supreme Court under clause 93, because any violation of the fundamental rights guaranteed by the Constitution would necessarily raise a question of interpretation of the Constitution and thus attract the appellate jurisdiction of the Supreme Court. In such a case, therefore, it seems unnecessary to give the Supreme Court a separate power to issue a *habeas corpus* direction: the power given to the High Court and the right of appeal to the Supreme Court should be sufficient for all practical purposes.

The only case where a separate power of this kind may be necessary is in a federated Indian State, if there is no High Court in the State with

powers analogous to those conferred by section 491 of the Criminal Procedure Code.

Coming next to the writ of *mandamus*, we find that the High Courts of Calcutta, Madras and Bombay have under section 45 of the Specific Relief Act powers equivalent to *mandamus*, and in the exercise of those powers they may make orders requiring any specific act to be done or forbore within the units of their ordinary original civil jurisdiction by any person holding a public office or by any corporation or any inferior court of justice. The question arises whether it would not be better to extend these powers to all High Courts throughout their territorial jurisdiction and leave the remedy in the Supreme Court to be by way of appeal from the decisions of the High Courts, rather than to confer a separate original power on the Supreme Court. Here again, the position of the federated States might require special examination.

As regards the other writs, we shall have to consider whether they are at all necessary. In this connection, an illustration given by the writer in the *Federalist* may be of assistance. Under section 25 of the English Housing Act, 1936, a local authority has in certain circumstances power to make what is known as a "clearance order" ordering the demolition of insanitary buildings. Under section 26 of the Act, such an order is to be submitted to the Minister of Health for confirmation. Any person aggrieved by the confirmation order and desiring to question its validity on the ground that it is not within the powers conferred by the Act or that any requirement of the Act has not been complied with, may apply to the High Court within a prescribed time to have it set aside, but the Act provides that otherwise the order "shall not be questioned by prohibition or *certiorari* or in any legal proceedings whatsoever". Such a provision cannot be made in India under the new constitution, because clause 97 invests the Supreme Court with power to issue directions or orders in the nature of prohibition, *quo warranto* and *certiorari*, and clause 28(2) provides that the right of the individual to move the Supreme Court is not to be suspended except in certain cases of emergency. This is only one illustration : it shows how the public health activities of the State may be hampered by the provisions in the Draft Constitution relating to the writs.

We may therefore consider (a) whether clause 97 should not be limited to *habeas corpus* and *mandamus* and (b) whether there should not be a proviso to the clause on the following lines :

Provided that where there is a High Court competent to issue such directions or orders, the Supreme Court may refuse to exercise the power conferred by this section save in its appellate jurisdiction.

There is, generally speaking, a lack of uniformity in the provisions relating to the Executive Government at the Centre and in the Provinces. Both sets of provisions are a compromise, in different degrees, between the

American Presidential and the British Parliamentary systems. At the Centre, there is a President chosen by an electoral college consisting of the members of the Central and unit legislatures; there is a Vice-President chosen by the Central legislature; and in addition, there is a Prime Minister at the head of a Cabinet responsible to the House of the People. The President is to act on the advice of the Cabinet in all matters. In the provinces, there is a Governor chosen by direct vote of the electorate of the Province; there is a Deputy Governor chosen by the provincial legislature; and in addition there is a Prime Minister at the head of a Cabinet responsible to the legislature. The Governor is to act on the advice of the Cabinet except where he is required to act in his discretion; he can, in a grave emergency, suspend the Cabinet form of government for a period not exceeding two weeks.

The broad question arises whether the co-existence of a President, a Vice-President and a Prime Minister at the Centre and of a Governor, a Deputy Governor and a Prime Minister in the Provinces, each chosen as laid down here, will not gravely weaken the executive.

Clause 83: This follows a similar provision in the Constituent Assembly Rules.

Clauses 87-105: These follow, for the most part, the corresponding provisions in the Government of India Act, 1935, as adapted by the India (Provisional Constitution) Order, 1947. Clause 87(4) relating to removal of judges follows section 72(ii) of the Commonwealth of Australia Act. Clause 90 is taken from section 30 of the Canadian Supreme Court Act. In clause 94, the minimum value for appeal to the Supreme Court has been fixed at Rs. 20,000; the corresponding sum in section 206 of the Government of India Act, 1935 is Rs. 50,000 or such other sum not less than Rs. 15,000 as may be fixed by Federal law.

Clause 110: Only the existing Governors' Provinces are enumerated in this clause. As regards proposed new Provinces, the Union Constitution Committee and the Provincial Constitution Committee, at a joint meeting, approved of a recommendation in the following terms:

(1) As soon as the Dominion Status Constitution comes into operation (on or before August 15, 1947), the Dominion Government for the areas concerned should appoint a Commission under a Dominion Act, if necessary, to examine the question of creating the proposed new Provinces of Andhra, Karnataka, Kerala and Maharashtra. The Commission should submit its report as early as possible, so that the new Provinces, if any, which it may recommend may be enumerated in the new constitution and suitable provision made therein on the lines of sections 46 and 289 of the Act of 1935.

(2) There should in addition be a provision in the new constitution on the lines of section 290 of the Act of 1935. For this purpose, clause 3 in the Constitutional Adviser's memorandum on the Union Constitution

would be generally suitable; but provision should be made for the inclusion of Indian State territory or centrally administered areas.

The recommendation has not yet been considered by the Constituent Assembly and hence no new province has been enumerated in the draft constitution.

Clauses 111-128: It has already been pointed out that the co-existence of a Governor, a Deputy Governor and a Prime Minister chosen as laid down in these provisions may lead in practice to divided authority and grave weakening of the administration.

Clause 119: If the Governor happens to die or resign office soon after his election, the Deputy Governor will step into his place and will act as Governor for the unexpired remainder of the four years for which the Governor was chosen. It will be noticed that the Deputy Governor is to be elected only by the members of the provincial legislature whereas the Governor is to be elected by direct vote of the entire electorate of the province, so that in the contingency mentioned there will be a person acting as Governor who was chosen in quite a different way.

If a similar contingency occurs at the Centre, the Vice-President acts as President only until the new President is elected.

Again, in the provinces the Deputy Governor does not appear to have any definite functions to perform so long as the Governor is there, while at the Centre the Vice-President is *ex-officio* Chairman of the Upper House.

While therefore there may be something to be said for having a Vice-President at the Centre, the provision for a Deputy Governor in the Provinces seems to create more problems than it solves. It is therefore a matter for serious consideration whether the provision should be retained. It will be noticed that clause 120 empowers the provincial legislature to make such provisions as it thinks fit for the discharge of the functions of the Governor or the Deputy Governor in any contingency not provided for in the constitution. If the provision for the Deputy Governor is omitted, we have simply to omit the words "or the Deputy Governor" in clause 120.

Clause 129: The blanks will have to be filled in after each Province has decided whether it should have two Houses or only one House.

Clause 130(6A): This may be compared with clause 60(8) *ante* and section 51 of the British North America Act.

Clause 131(3): This sub-clause provides for functional representation to the Upper House in those provinces which desire to have an Upper House. This corresponds to clause 60(2) *ante* for the Centre. Both provisions are borrowed from the Irish Constitution. It will be necessary to fill in details regarding the formation of the panels after examining the working of the Irish provisions.

Clause 138(4): The provision for the quorum explains itself. If one of the smaller provinces should happen to have an Upper House, the total

number of members of the House may not exceed 25 [see clause 131(1)] and one-sixth of that number would come to less than five, hence the provision that "the quorum should not be less than ten".

Clause 155: This is on the lines of the corresponding provision in the Rules of the Constituent Assembly.

Clause 164(2): Some of the provinces may wish to fix a higher age limit than 60 years, particularly those provinces where climatic conditions are favourable and the work is not so arduous as elsewhere. It will be noticed that the age limit for a judge of the Federal Court is 65 years. The constitution and organisation of all courts except the Federal Court is a provincial subject; hence the provision "until he attains the age of 60 years or such higher age as may be fixed in this behalf by Act of the provincial legislature". This will enable each provincial legislature to fix its own age limit.

Part VI deals with the Chief Commissioners' Provinces. The provisions incorporated in the draft may require revision in the light of the report which the Committee on Chief Commissioners' Provinces will submit in due course.

Clause 194: This follows one of the recommendations of the Sub-Committee on the Excluded and Partially-excluded Areas.

The provisions of *Part IX* will require to be revised in the light of the recommendations of the *ad hoc* Experts' Committee recently appointed. For the most part, the draft follows the provisions of the Government of India Act, 1935; but there is an important change in clause 207 of the draft as compared with section 155 of the Act. The latter confines federal taxation of unit Governments to such trades or business as are carried on by them outside their own territories; the former has removed this limitation. It must be remembered that the units are all represented in the Federal Parliament and if that Parliament decides to impose a tax falling equally upon the Governments of the units as well as upon others, there is no reason why the Constitution should stand in the way. In the very first inter-governmental tax case of the United States of America *McCulloch v. Maryland*, Chief Justice Marshall explained why the Federation should have power to tax the units but not *vice versa*:

The people of all the states and the states themselves are represented in the Congress and by their representatives who exercise this power. When they tax the chartered institutions of the State they tax their constituents...But when a State taxes the operations of the Government of the United States, it acts upon institutions created, not by their own constituents but by people over whom they claim no control. The difference is that which always exists, and always must exist, between the action of the whole on a part and the action of a part on the whole—between the laws of a government declared to be supreme and those of a government, which, when in opposition to those laws, is not supreme.

If for example any unit should engage directly in the liquor business by establishing a State monopoly therein and should make large profits, should the Federal Parliament be prohibited by the Constitution from levying an income-tax on those profits on the same basis as it levies an income-tax on similar profits made by private persons in other units? In the United States of America there is no such ban [see *South Carolina v. United States*, 199 U.S. 437 (1905)], the Supreme Court having ruled that there can be no immunity from taxation where a State enters "an ordinary private business".

(III) A NOTE BY K. M. MUNSHI ON CERTAIN CLAUSES October 1947

In my opinion, certain words should first be settled and defined.

1. The word 'Federation' was tentatively fixed; but as I had pointed out it may lead to many legal complications. The adjective 'federal' is equally objectionable. These should be 'India' and 'Indian Parliament'. The provincial assemblies are not named parliaments.

2. The word 'State' is differently used. Sometimes the word 'unit' is used; in Part III 'State' is differently used. This will lead to confusion.

I suggest that one word 'State' should be used for all units, and 'India' for the Centre. Indian States should not be given a different name from the Provinces, as in my opinion, a tradition should be created from now that they are units, though they have different rights. They may be put in Part III of the Schedule, and called 'States in Part III'.

3. I therefore suggest some such phrasing for clause 1(2) :

(a) The territories of India shall consist of the States referred to in the First Schedule to this Constitution.

(b) A State in Part III of the First Schedule to this Constitution shall be called a federated State, till such time as the Parliament otherwise decides.

4. The word 'State' in clause 8(2) may be substituted by the words 'authorities in India' or 'authorities' and may be defined.

I sent several suggestions for being considered by the committee when clauses 4 to 7 were being discussed.

The persons who at the date of the Constitution must be made citizens should include—

(a) a person born or whose parents have been born in India and who has a domicile therein and who after 3rd June 1947,

(i) has not left for Pakistan as a refugee or an evacuee;

(ii) has not gone to Pakistan with intent to reside and settle therein;

(iii) has not transferred his head office from India to Pakistan;

(iv) has not obtained permanent employment in Pakistan;

- (b) any person born in India as defined under the Government of India Act, 1935, who after 3rd June 1947,
 - (i) has come to India as a refugee or evacuee from Pakistan;
 - (ii) has come to India to reside in and settle in India;
 - (iii) transferred his head office to India;
 - (iv) secured permanent employment in India; and who before the date of the constitution—
 - (a) makes a declaration of allegiance to the Union; and
 - (b) either—
 - (i) has been residing in India for a month; or
 - (ii) possesses or acquires a house in India, where his family has been residing for 3 months prior thereto;
 - (c) any woman or minor if the person on whom she or it is dependent falls within the categories (a) and (b).

Clause 6(b) requires to be recast. Any such person may conceivably be brought up in Pakistan. A provision similar to the one in the American Nationality Act should be put in to the effect that if one of the parents is an alien, the right of citizenship would not descend to the child—

- (a) unless he resides in India five years continuously immediately previous to his eighteenth birthday and unless within six months after the twentyfirst he takes the oath of allegiance; and
- (b) the citizen parent has resided in India previous to the birth of the child.

(IV) A NOTE ON CERTAIN CLAUSES BY ALLADI KRISHNASWAMI AYYAR

As clauses 59 and 60 have been held over and are awaiting the report of the Union Constitution Committee in regard to the numerical composition of the Houses, the amendments to these clauses have to be taken up after the report is received. Clause 61, in regard to the meeting of Parliament, is on the lines of section 19 of the Government of India Act, 1935. The suggestion is put forward in some quarters that 'twice' may be substituted for 'once' and 'six months' for 'twelve months'.

Clause 61(3): For the words "after the commencement of this Constitution" substitute the words "after the first general election under this Constitution".

Clause 64(1) Proviso: For the words "the said office shall during such period be deemed to be vacant", substitute the words "the said duties shall during such period be performed by the Deputy Chairman".

Clause 64(4): For the words "While the office of Chairman is vacant" substitute the words "While the Chairman is unable to perform the duties of his office".

Clause 67(3): Is such a provision necessary?

Clause 68: In clause 68(1)(c), I would substitute for the words "if he

is an undischarged insolvent" the words used in section 73 of the Provincial Insolvency Act and in section 103-A of the Presidency Towns Insolvency Act.

The disqualification under sub-clause (c) shall be removed and shall cease if the order of adjudication is annulled or if an insolvent has obtained from the court an order of discharge with a certificate that his insolvency was caused by misfortune without any misconduct on his part. In clause 68(1) and (3) the desirability of introducing a disqualification as in section 44 of the Australian Commonwealth Act may be considered.

Clause 68(4): "Minister for a Province"—What about Ministers in acceding States who might be promoted from official cadres or are in the position of regular officials?

Clause 74(2): The period of 30 days provided for in the clause seems to be too long. As the Upper House has very restricted powers, would not a period of 7 days or 14 days do? In clause 75 as proposed, why omit appropriation which is specifically included in section 52 of the Australian Commonwealth Act?

Clause 76: Clause 76, as worded, is general and applies to every kind of Bill, including a Money Bill. Though a general provision like this is found in every Dominion Bill (*vide* section 55, British North America Act), strictly speaking, it is inconsistent with any such power inhering in a President who is merely the head of a responsible Government. Would the committee consider the advisability of excepting Money Bills as is suggested in some quarters?

Clause 78(3): After the words "No demand for a grant" add "or for an increase thereof".

Clause 81(1): There is no justification for departing from the principle of section 37 of the present Act. I would suggest the following alteration of clause 81(1) on the lines of the present clause 78:

For the words "an amendment thereto", substitute "an amendment thereto involving an increase of the tax or the expenditure proposed".

As the clause stands, it would rule out even cases of reduction.

Clause 83: The reference to script requires consideration.

Clause 83(2): For sub-clause (2) substitute:

The Chairman of the Council of States or the Speaker of the House of the People shall make arrangements for making available in the Council of States or the House of the People, as the case may be, (a) in the case of a speech delivered in Hindustani or in the English language a summary of the speech in the language other than that used by the member, and (b) where a member addresses the House in a language other than Hindustani or the English language, a summary of the speech in English and Hindustani shall be included in the record of the proceedings of the House in which such a speech has been delivered.

Clause 87(3)(b) and (c): Sub-clause (b) is unnecessary as there cannot be any idea of importing a barrister from England and as a barrister has

a right of audience in a High Court only by being enrolled as an advocate of the said court. It is enough if the expression "advocate" is substituted for the word "pleader" in sub-clause (c).

Explanation II will be omitted.

Clause 88 : The expression "allowances for expenses in respect of equipment and travelling" is an anachronism at the present day.

Clause 92 : In the expression "the Federation and the units" the word "or" will have to be substituted for "and", to make it clear that a dispute between the units is also within the jurisdiction of the Supreme Court (*vide* the present clause 204 in which it is stated in greater detail).

Proviso : I would omit the use of the expression "which was entered into or executed before the commencement of this Constitution or". In the first place, according to section 7(1)(b) of the Independence Act, all treaties, agreements, engagements and *sanads* have lapsed. That is why standstill agreements have been necessitated. If the jurisdiction has to be excluded, it must be specifically provided for in the new agreements or Instruments of Accession that are entered into with the Union.

Clauses 93 and 95 : Both as a result of the report of the Expert Committee* and the situation that has emerged as a result of the partition, the following points will have to be brought out in the draft and the clauses will have to be canvassed with a view to see whether this result has been achieved :

- (1) So far as what may be termed for the sake of convenience British Indian units are concerned, the Supreme Court will function as a general court of appeal in civil causes subject to any provision as to valuation either in the Constitution Act or in any future Act of the Federal Legislature; and when an appeal is one before the Supreme Court, it will have the jurisdiction and authority to go into every point, constitutional or otherwise, arising in the case.
- (2) In addition to the above in civil causes, there might be a right of appeal if special leave is granted.
- (3) Irrespective of any question of valuation, if a constitutional point is raised in a case, it is common ground that there must be a right of appeal as under the present Act with the safeguard that if the High Court refuses leave it may be open to the litigant to seek leave in the Supreme Court. This provision would be common to appeals from the Indian States as well as from High Courts in the provinces.
- (4) A further recommendation of the committee was to the following effect : Even though a constitutional point does not arise for consideration in a proceeding before a High Court in an acceding State,
 - (a) if a case involves the interpretation or application of a law

*See Vol. II, Document No. 18(i), appendix.

other than that of the law of the unit in which the question arises, or (b) if a case involves the interpretation of a federal law, then also the litigant must have the right to have the matter referred to the Supreme Court. The reference would be somewhat of the type envisaged in Order 46 of the Civil Procedure Code. If any such point as the one referred to above is raised, the High Court of the acceding State would have to stay further proceedings in the suit until the question of interpretation of the federal law or the interpretation and application of the law of a State other than that of the unit in which the question arises for consideration, is finally decided by the Supreme Court, and when such decision has been communicated, would give effect to it in pronouncing the judgment. Criminal cases will have to be separately provided for.

- (1) The point must be made clear that, where a constitutional point is involved, the High Courts would have the jurisdiction to grant leave from the decisions of the courts of the units. There was some difference of opinion on this question in the Federal Court in earlier cases, though the majority view was in favour of a right of appeal (Sulaiman J. dissenting). The Privy Council has recently upheld the majority view (72 Indian Appeals 241—*Sibnath Banerji's case*).
- (2) A provision will have to be inserted for the Supreme Court functioning as a court of criminal appeal from the provincial units, with jurisdiction at least similar to the jurisdiction exercised by His Majesty in Council in the exercise of prerogative—say, where there is a serious miscarriage of justice.

In addition to the points above mentioned, the following points will also have to be cleared up in view of certain points which came up for consideration before the Federal Court during the working of the Act of 1935 :

- (1) A doubt was felt as to whether the Federal Court had the power to suspend sentences and to grant bail where an appeal had been admitted by the Federal Court.
- (2) Under the existing law, the Federal Court could only make declarations leaving it to the High Court to pass effective decrees. A provision will have to be inserted to the effect that the Supreme Court could pass effective decrees and corresponding and complementary changes will have to be made in Order 45 of the Civil Procedure Code for execution of decrees.
- (3) There are certain minor verbal amendments which have to be made in the clauses.

To bring out all the above points, I would suggest the following changes in the Chapter relating to the Supreme Court :

In clause 94 I would suggest the following to be added: "Subject to any law of the Union Parliament".

The question as to the figure of Rs. 20,000 is a matter of policy.

Clause 93 and the first part of clause 95 might be consolidated into one provision by the use of the expression "State in any of the Groups I and III".

The addition of the words in clause 93 "whether in civil or criminal proceedings" will remove any doubt which existed before the decision of the Privy Council in 72 Indian Appeals 241 (*Sibnath Banerji's case*) as to whether an appeal lay to the Federal Court from an order in a criminal proceeding.

Under clause 96, the Union Parliament can enlarge the jurisdiction of the Supreme Court and there is no reason why the Union Parliament should not have the right also to curtail the right of appeal. To bring this out the words "subject to the provisions of any federal law" might be inserted.

Clause 94: The opening words in this clause "Subject to such rules as the Supreme Court may make in this behalf"—it is evidently an adaptation of the language used in section 109 of the Civil Procedure Code. His Majesty in Council has, under the Judicial Committee Act, the power to regulate rights of appeal, but that power cannot be vested in the Supreme Court. Any question as to the extent of the right of appeal must be determined by the duly constituted legislature and not by the court. That would be to constitute the court into a legislative authority. I would suggest that a special provision in the following words may be inserted for the Supreme Court functioning as a court of criminal appeal from the provinces on lines similar to the jurisdiction exercised by the Privy Council at present:

The Supreme Court may grant special leave to appeal against any conviction or sentence in a criminal proceeding from any of the High Courts in any of the States in Groups 1 and 3, where the Supreme Court is satisfied that there is some grave miscarriage of justice or a disregard of the forms of legal process or some violation of the principles of natural justice.

This language is a reproduction *verbatim* of the law as laid down by the Judicial Committee in *Dilot's case*.

Clause 95(2): This does not bring out the suggestions of the *ad hoc* committee which were adopted by the Constituent Assembly. The main point in the recommendations of the *ad hoc* committee* was that in order to secure uniformity of law and justice in the Union, the litigant should be in a position to get a pronouncement of the Supreme Court: (a) on the question of the interpretation and legal effect of a federal law, and (b) on the applicability and interpretation, in any proceeding before the court, of the law of any State other than that in which the proceeding is pending.

*See Vol. II, Document No. 18(i), appendix.

At the same time, anxiety was exhibited on the part of the State representative in the committee that there shall be no general right of appeal in regard to the State's internal law. To achieve this result, the following will have to be substituted for clause 95(2) :

(1) While in the course of any proceeding, civil or criminal, in a High Court in any State in Group 3, Schedule I, any question as to the applicability or interpretation of any federal law or of the law of any State other than the State in which the proceeding is pending, which is material for the determination of the controversy before the court, the court may, either of its own motion or on the application of any of the parties, draw up a statement of such points which arise for determination and refer such case with its own opinion on the points for the decision of the Supreme Court.

(2) Where any such court refuses to state a case under sub-clause (1), it shall be competent for the Supreme Court to direct the High Court concerned to state the case.

(3) When such a reference is made, either under sub-clause (1) or sub-clause (2), the High Court shall stay all proceedings.

(4) The Supreme Court shall, after hearing the parties if they appear and desire to be heard, decide the points so referred and shall cause a copy of the judgement to be transmitted to the High Court, and such court shall, on receipt thereof, proceed to dispose of the case in conformity with the decision of the Supreme Court.

(This is an adaptation of Order 46, rules 1 to 3, of the Civil Procedure Code.)

(5) The Supreme Court may at any stage return any case in order that further facts may be stated therein.

Clause 96 : I would urge the deletion of the words "with respect to any of the matters in the Federal Legislative List". Both under the existing constitution and under the proposed one, the courts have general jurisdiction in respect of every matter to whatever List it might relate. In view of this, sub-clause (2) is superfluous and unnecessary, as there is nothing to preclude the Union Parliament from giving effect to any such agreement as is contemplated under sub-clause (2).

Clause 97 : After the word "shall" may be added the words "throughout the territories of the Union".

Clauses 98 and 99 : The consensus of opinion in the *ad hoc* committee, whether it is clearly brought out in the report or not, was that the decrees need not be declarations as now, but should be enforceable whatever might be the form of enforceability, where the decree is against a State or province. I would therefore suggest that clause 99 may be deleted so as to secure uniformity between the provinces and the States. I would suggest the insertion of a general provision to the effect that the orders and decrees should be enforceable throughout the Union with an additional clause that further provision may be made by Federal law to give effect to that

clause. In view of this any special provision as to enforceability of orders as to costs is unnecessary.

Omit clause 103.

Clause 164: In view of the fact that the age limit of a judge of the Supreme Court has been fixed at 65 by the Constituent Assembly after due consideration of the report of the Expert Committee and the recommendations of the Union Constitution Committee, the age for retirement of a High Court Judge must be fixed at an age lower than 65. I am not for adding the words "or such higher age as may be fixed in this behalf by Act of the Provincial Legislature". If it is decided however to increase the age limit, I would suggest 62 instead of 60. The main reason which influenced Parliament on the last occasion to fix the age for High Court Judges at 60 was that the judges of the Federal Court would generally be recruited from the High Court Bench. The work in the High Court would be much more strenuous and taxing than in the Supreme Court as a court of appeal from the High Court.

Clause 164(3)(a): This sub-clause is an anachronism in an independent India. Even under the present dispensation a barrister as such has no status in an Indian High Court but only as an enrolled advocate of the particular High Court, as has already been pointed out. If this clause is omitted, consequential amendment would have to be carried out in the Explanation.

Clause 164(3)(c): For "pleader" substitute "advocate". Consequential changes would have to be made in the Explanation.

Clause 164(4): While I have no objection to the procedure in clause (4) as the same is in line with the principle adopted in regard to the judges of the Supreme Court, the alternative procedure of the Supreme Court exercising the functions of the Judicial Committee and reporting to the President may also be considered—*vide* sec. 220(2)(b) of the Government of India Act, 1935.

Clause 165: I would urge the deletion of "including allowances for expenses in respect of equipment". Equipment expenses were specially put in to help European appointees.

Clause 166: The advisability of inserting a provision enabling the Chief Justice to indent upon the services of retired judges to cope with additional work on the lines of section 3 of the English Judicature Act, 1925 may be considered.

Clause 167: At the last meeting of the Constituent Assembly, it was decided that the restriction as to the jurisdiction in revenue matters should no longer apply. That is why apparently section 226 of the Government of India Act, 1935, is not reproduced in the draft. But I am afraid that the general declaration in clause 167 that the jurisdiction shall be the same as immediately before the commencement of the constitution may unintentionally attract the disability. I would therefore suggest a proviso or

an independent provision being added that the disability does no longer attach. The proviso might run in these terms :

Provided however that any restriction in regard to the exercise of original jurisdiction of any of the High Courts by reason of the same relating to matters of revenue shall no longer apply to the exercise of such jurisdiction.

I am for the deletion of the words "the law administered in". This is an anachronism going to the days when the law administered in the Presidency towns was different from the law administered in the *sudder* courts in the *mofussil*.

There is a further point with regard to clause 167 which is worthy of consideration. At present under the three lists, the authority that can affect the jurisdiction of the High Court is the particular legislature concerned. The High Court is functioning as a single institution under the existing enactments in respect of all matters comprised in the three lists. If any reform is to be effected the intervention of two legislatures becomes necessary and if the matter falls within the Concurrent List, it is subject to the amending power of the Centre. I would prefer a single legislature being invested with the authority at least so far as the jurisdiction of the High Court is concerned.

Clause 168: I am for deletion of clause (2). At the last meeting of the Constituent Assembly, I moved for the restoration of the revisional powers which the High Courts have been exercising over courts subject to their appellate jurisdiction ever since the constitution of the High Courts in 1861, originally under section 15 of the High Courts Act of 1861 and later under section 107 of the Government of India Act, 1915. The power of superintendence was taken away by section 224(2) of the Government of India Act, 1935, which is repeated in clause 168(2) of the draft. The Constituent Assembly having decided to restore the superintending jurisdiction of the High Court, clause 168(2) has to be omitted.

Clause 169: If the court is satisfied that there is a constitutional point involved arising for decision in a case, there is no reason why an application by the Advocate-General is necessary. Under the Civil Procedure Code and under the Letters Patent, the High Court has a general power of transfer of suits pending in subordinate courts. If necessary a general provision may be inserted that the High Court may direct the withdrawal from a subordinate court and a transfer to itself, whenever it is satisfied that a substantial question involving the interpretation of the constitution is involved in any suit or proceeding in a subordinate court (*cf.* The Australian Judicature Act). If necessary, provision may be made for notice being given to the Advocate-General of the Union and the province before the hearing of the application.

Clause 171(2): The judge having been granted security of tenure under clause 164, the expression "as may be deemed necessary" seems to be

inappropriate so far as judges are concerned. So I would suggest the omission of "judges" in clause 171(2) and add a proviso in the following terms :

Provided that in the event of re-constitution, the judges of the court or courts holding office at the time of the re-constitution shall be continued as judges of such court as may be specified by such Act.

Clause 173 : Delete the portion of the clause commencing with "but shall not by virtue of this Constitution be required to relinquish". This clause has been abused for extending the term of certain judges and does not serve any purpose.

(V) SUGGESTIONS AND AMENDMENTS BY D. P. KHAITAN

(a) Suggestions for New Clauses

1. Provision for an Inter-State Commission should be made, which was accepted in principle while settling the principles of the Union constitution*, as under :

PART VII-A

There shall be an Inter-State Commission in the manner prescribed by a Federal law, with such power of adjudication and administration as may be similarly prescribed for the execution and maintenance of the provisions of this Constitution relating to trade and commerce and generally for adjudicating in similar matters as may be referred to it from time to time by the President.

2. Residual powers to remain with the Centre.
3. No law with retrospective effect in favour of Government.
4. Separate judiciary from executive.
5. Law made for one purpose should not be used for others—separate law would be passed therefor.
6. No labour should be forced on an employer against his will.

(b) Amendments to Clauses

Clauses

Amendment

- | | |
|---------|---|
| 1(1) | Add, at the end, 'and shall in the Indian languages be called Bharat'. |
| 3(1) | 'Consultation' instead of 'Consent'. |
| 3(1)(a) | 'Consultation' instead of 'Consent'. |
| 3(2) | Provide for the alteration of the name of unit. |
| 5 | Add provision, so that women on being married to a citizen should automatically become a citizen. |
| 5 & 6 | Suitable provision is needed for those who have immigrated from Pakistan. |
| 11 | Add, after 'race, caste, sex', 'or domicile in any other unit'. |
| 11 | After 'entertainment', add, 'amusement'. |

*See Vol. II, Document No. 18(iv).

Clauses

Amendment

- 12(2) Add 'domicile', after, 'place of birth'.
- 12(3) Add after 'citizens', 'being minorities'.
- 14(1) Add after 'Federation', 'or by the Government of any unit'.
- 14(3) Substitute 'citizen' in place of 'person'.
- 15(3) Instead of 'public', 'of the Federation as a whole'.
- 21 Subject to public order, morality and health.
- 24(1) Should be subject to adoption of national language and script.
Culture should be subject to public order, health and morality.
- 24(3) Subject to public order, health and morality.
- 27(2) Courts of competent jurisdiction.
- 53(2)(a) The President in his individual judgment should have powers to take steps if the Constitution fails or in grave emergency.
- 57(2) Add "Supreme Court, and all courts established by the Federation".
- 60(1) & (2) By selected constituencies.
- 60(2) Number of seats should be fixed to be elected by prescribed constituencies to represent the interests.
- 60(5)(a) Proviso : Reservation should be for 10 years, subject to reconsideration according to the procedure for changing the Constitution.
- 63 The Advocate-General should not be a member of either House.
- 67(1) Nor be a member of any unit legislature.
- 68(3) Add the words 'against him', after 'disposed of'.
- 68(4) The words 'or for a province' should be omitted.
- 69 The penalty of five hundred rupees being a fixed amount is too high.
- 71 Are salaries free of taxes of income?
- 76 Proviso : What happens if it is a Money Bill and the President withholds consent ?
- 81 'Approval' instead of 'recommendation'.
- 83(1) Hindi in *Devanagari* script.
- 87(2) In his individual judgment,
Does it mean "as he may deem necessary" ?
- 87(3)(a) Are not I.C.S. to be excluded ?
- 87(3)(c) 'Advocate' instead of 'Pleader'.
- 92 Specify :
 1. Dispute between unit and unit on constitutional questions (See also clause 9).
 2. Dispute for the assertion of a fundamental right (justiciable) clause 28(1).
 3. Dispute refused by a High Court in which a constitutional question arises (appeal under clause 93).
 4. Dispute between State and party, or between party and party in which a constitutional question directly arises, and certified by a court (or High Court) to be fit to go to the Supreme Court.
- Insert the words 'any of', between 'Federation' and 'the units'.
- Proviso : Who will decide such a dispute ?
- 97 And such other rights as may accrue to the Federation or a State or a person under or out of the constitution, but subject to the provisions of the constitution as also in respect of such matters as the High Courts of Calcutta, Bombay, and Madras could issue such writs prior to 15th August 1947.
- 102(2) Proviso : Full court should not mean all the judges. Five judges should be sufficient.
- 103 Add 'or to administer justice as regards interests and rights of persons'.
- 115(c) 'A province' instead of 'the province'.
- 116(1) Governor should not be a member of any local or other body, subject to the control of either Government.

*Clauses**Amendment*

- 118(2) Persons should not be members of the legislatures of the province or of any provincial legislature.
- 119(6) 'A provincial legislature', instead of 'the provincial legislature'.
- 130(3) Provision should be made for the specification of the constituencies for which the reservation will have effect. Seats will be reserved for 10 years.
- 131(2)(a)&(3) There should be appropriate constituencies.
- 141(4) 'The province' instead of 'a province'. The words 'either for the Federation' should be omitted.
- 142 Penalty being a fixed amount is heavy.
- 153 'Approval' instead of 'recommendation'.
- 168 Could something be done to separate the judiciary from the executive ?
- 183(1) This needs alteration to be effective. When a subject is common to more than one province, the Federal Legislature should have the power to pass the necessary legislation.
- 183(2) This should be omitted.
- Part VIII Provision should be made for an inter-State Commission for trade and commerce on the lines of Part VII-A as adopted by the Constituent Assembly.
- 187 If the Government of a unit does not give consent, the Federation Government should have power to get the Federal laws enforced in any unit through Federal officers.
- 189(2)(c) 'Related to', instead of 'specified in that behalf'.
- 190 Does not seem to be sufficient.
- 192(2) The power to exercise functions may be revoked if conditions are not complied with.
- 193 There should be a provision to put the recommendations into effect.
- Part IX Contributions from provinces to Centre should also be provided for.
- 196 Duties should be a prescribed percentage. Proviso to be omitted.
- 198(1) I do not like this in the Constitution.
- 207(a) What about gains on investment ? They should also be liable to tax.
- 210(1) Consent of the Federation should be obtained. Sub-clause (3) does not seem to be sufficient.
- 231(1)(b) An Anglo-Indian's mother, grand-mother etc. must have been Indian.
- (c) Instead of the word 'person', the word 'citizen' should be substituted.
- 232 Second proviso : Last two lines are inaccurate. Reservation should be for 10 years subject to reconsideration according to the procedure for change of Constitution.
- 235 The Ministers should also continue until new Ministers are appointed in the usual course.
- 237(a) The power to make an order should continue until the Federal Parliament is in a position to pass the necessary law, *e.g.*, a period of two months may be allowed after the first meeting. A safeguard may be provided that the power will disappear earlier than two months if the Federal Parliament passes the necessary law.

REPORT BY THE CONSTITUTIONAL ADVISER ON HIS VISIT TO U.S.A., CANADA, IRELAND AND ENGLAND

[On the completion of the draft of the Constitution (see Document No. 1) for consideration by the Drafting Committee, the Constitutional Adviser, B. N. Rau visited (October 26—December 2, 1947) the United States of America, Canada, Ireland and the United Kingdom for personal discussions with some of the leading personalities and constitutional experts on important features of India's Draft Constitution. In the course of his tour B. N. Rau had discussions in the United States with President Truman, the Chief Justice of the Supreme Court, ex-Chief Justice Hughes, Justice Frankfurter, Justice Burton and Justice Murphy of the Supreme Court, Justice Learned Hand of the Federal Circuit Court of Appeals, F. H. Boland, the Irish Secretary for Foreign Affairs, Professors Jessup, Mirkine and Dowling, and the Secretary-General of the United Nations Year Book on Human Rights, Hamburger; in Canada with Justice Thorsen, President of the Exchequer Court, John Hearne, High Commissioner of Ireland, and Wershof and Jackett, constitutional experts; in Ireland with Prime Minister Eamon de Valera and the Attorney-General; and in the United Kingdom with Noel Baker, Commonwealth Secretary, Stafford Cripps, and Privy Councillors, John Beaumont and C. Madhavan Nair. On the conclusion of his visit, the Constitutional Adviser submitted to the President of the Assembly a report on his discussions abroad. The text of the report is reproduced below.]

RESULT OF DISCUSSIONS IN WASHINGTON, OTTAWA AND NEW YORK

I ARRIVED IN New York on the evening of October 26th and have since had a busy time. I have had discussions in Washington with the Chief Justice of the Supreme Court, ex-Chief Justice Hughes and Justices Frankfurter, Burton and Murphy, as well as with Mr. Boland, the Irish Secretary for Foreign Affairs; in Ottawa with Justice Thorsen, President of the Exchequer Court, Mr. John Hearne, the High Commissioner for Ireland, Mr. Wershof and Mr. Jackett, constitutional experts; in New York with Justice Learned Hand of the Federal Circuit Court of Appeals.

As the result of these discussions I have already proposed two amendments

to our Draft Constitution. These have been explained in detail in my airgraph letter of 11-11-47 (Appendix I) and need only be briefly mentioned here. The first of them is designed to secure that when a law made by the State in the discharge of one of the fundamental duties imposed upon it by the Constitution happens to conflict with one of the fundamental rights guaranteed to the individual, the former should prevail over the latter: in other words, the general welfare should prevail over the individual right. Indeed, Justice Frankfurter considered that the power of judicial review implied in the due process clause of which there is a qualified version in clause 16 of our Draft Constitution was not only undemocratic (because it gave a few judges a power of vetoing legislation enacted by the representatives of the nation) but also threw an unfair burden on the judiciary; and Justice Learned Hand considered that it would be better to have all fundamental rights as moral precepts than as legal fetters in the Constitution.

The other amendment is designed to secure that when the national interest requires that a certain matter, ordinarily falling in the exclusively provincial sphere, should be dealt with on a national basis, the Centre should have power to legislate on it on that basis.

Mr. Boland, the Irish Foreign Minister has suggested that I should visit Dublin and see De Valera. I am hoping to do so on my return journey from New York in the last week of November; this may result in my having to propose a few other constitutional amendments.

The provision in clause 238 of our Draft Constitution, enabling the Federal Parliament during the first three years to amend the Constitution by a simple Act of its own is regarded here as a wise precaution.

Two other clauses of the Draft Constitution are of particular interest just now. Clause 230 provides for the appointment of a commission to investigate the conditions of the backward classes and recommend measures for improving their lot. It is interesting to note in this connection that the President of the United States recently appointed a committee to recommend measures for the better protection of the civil rights of the people of the United States and the committee gave particular attention to the position of certain under-privileged classes. The committee's report has just been published and it amply proves the usefulness of a periodic review of this kind. Besides making a number of valuable recommendations, the committee has drawn attention to the remarkable work done in this sphere by the Civil Rights Section of the Department of Justice. This section was started as an experiment in 1939 but it has already proved a most useful agency and the committee has recommended that its hands should be further strengthened. Clause 229 of our Draft Constitution provides for the appointment of similar agencies in India (they are called Special Officers for Minorities) both at the Centre and in the provinces and we may confidently hope that they will prove equally successful.

The Canadian authorities, particularly Justice Thorsen, have advised us not to finalise the provisions of the Constitution relating to the relations between the Centre and the provinces, especially in the sphere of taxation and finance, without a careful study of the Rowell-Sirois Commission's Report on Dominion-Provincial Relations in Canada. The Government of the United States has also just issued the Magill Report on the tax structure of the Federation. Both these reports may be useful to our Expert Committee on Finance and I am hoping to send copies of both before I return.

The other materials I have been able to gather here bear, not so much on the Constitution itself, as on the supplemental legislation that will be necessary under the Constitution. Thus, Mr. Hearne, the Irish High Commissioner in Ottawa, was emphatically of the view that India should, as soon as possible, have a Nationality Act of her own and Mr. Boland, the Irish Foreign Secretary, explained how Ireland had tried to solve the problem. Apparently, in future, Irish citizens will not be British subjects, even outside Ireland, as they are at present, but they will have most of the privileges of British subjects. Reciprocally British subjects will be granted similar privileges in Ireland, although they may not be Irish citizens. This indicates a possible mode of evolving a common citizenship—or something almost equivalent thereto—even as between countries that do not acknowledge a common allegiance, *e.g.*, between any two members of UNO on a basis of reciprocity. Thus, citizens of State 'A' will not be automatically citizens of State 'B'; but 'A' may grant, within its own boundaries, all or any of the privileges of citizenship to the citizens of 'B', provided 'B' does the same to the citizens of 'A'.

Again, Justice Frankfurter was very emphatic that any jurisdiction, exercisable by the Supreme Court, should be exercised by the full court. His view is that the highest court of appeal in the land should not sit in divisions. Every judge, except of course such judges as may be disqualified by personal interest or otherwise from hearing particular cases, should share the responsibility for every decision of the court. Regarding the removal of judges, he drew attention to a provision which had just been proposed in New York State—the provision has since been approved—and which had the support of most of the judges and lawyers in this country. The provision is reproduced below :

9-a (1) A judge of the court of appeals, a justice of the supreme court, a judge of the court of claims, a surrogate, a special surrogate, a judge of the court of general sessions of the county of New York, a county judge, a special county judge or a justice of a city court of record may be removed or retired also by a court on the judiciary. The court shall be composed of the chief judge of the court of appeals, the senior associate judge of the court of appeals and one justice of the appellate division in each department designated by concurrence of a majority of the

justices of such appellate division. In the absence, inability or disqualification of the chief judge of the court of appeals or of the senior associate judge of that court, the court of appeals shall designate a judge or judges from the court of appeals to act in his or their stead.

(2) No judicial officer shall be removed by virtue of this section except for cause or be retired except for mental or physical disability preventing the proper performance of his judicial duties, nor unless he shall have been served with a statement of the charges alleged for his removal or the grounds for his retirement, and shall have had an opportunity to be heard.

(3) The trial of charges for the removal of a judicial officer or of the grounds for his retirement shall be held before a court on the judiciary. The affirmative concurrence of not less than four members of the court shall be necessary for the removal or retirement of a judicial officer. The court in its discretion may suspend a judicial officer from the exercise of his office pending the determination of the proceedings before the court. The action of the court shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any public office of honour, trust or profit under this state, or to retirement for disability; but any judicial officer whose removal is sought shall be liable to indictment and punishment according to law. A judicial officer retired for disability in accordance with this section shall thereafter receive such compensation as the legislature may provide.

(4) The chief judge of the court of appeals may convene the court on the judiciary upon his own motion and shall convene the court upon written request by the governor or by the presiding justice of any appellate division or by a majority of the judicial council or a majority of the executive committee of the New York State bar association thereunto duly authorized. The chief judge of the court of appeals shall act as the presiding officer of the court but in the absence, inability or disqualification of the chief judge, the senior associate judge of the court of appeals sitting on the court shall act as the presiding officer. After the court on the judiciary has been convened and charges of removal have been preferred against a judicial officer, the presiding officer of the court shall give written notice to the governor, the president of the senate and the speaker of the assembly of the name of the judicial officer against whom such charges have been preferred, of the nature of the charges and the date set for the trial thereof, which date shall be not less than sixty days after the giving of such notice. Immediately upon receipt of such notice the legislature shall be deemed to be in session for the purpose of this proceeding.

Mr. Hearne told me—and the Constitutional Adviser for Burma was told by De Valera himself—that the system of functional representation, provided under the Irish Constitution for the election of the Senate, had proved unsatisfactory and Ireland was passing, or had just passed, new legislation for the purpose.

RESULT OF FURTHER DISCUSSIONS IN WASHINGTON AND
NEW YORK

On November 19, 1947, I had the privilege of seeing President Truman at White House. Almost the first thing he said was, "Whatever else you may copy from our Constitution, do not copy our provision for mid-term elections." Under the Constitution of the United States of America the President has a four-year term and the House of Representatives a term of two years, so that there is a general election for the House in the middle of the President's term of office. This sometimes results—as it has now resulted—in the return of a party opposed to the President. It was this inconvenience which the President had in mind. Since we have adopted the parliamentary system in the Indian Constitution, the point is not as important as it is in the United States of America. Nevertheless, I was able to tell the President that we had made the President's term of office nearly the same as that of the House of the People so that we had not copied the provision in question. He then went on to say that the United States provision of an indissoluble Senate, one-third of which was renewable every two years, might well be copied. I was able to reply that we had, in fact, copied this provision in the Indian Constitution. I then mentioned that we had specially noted the step taken by him in December, 1946, in appointing a committee on civil rights—particularly the civil rights of the under-privileged classes. The committee's report had just been published and had proved how valuable was a periodic investigation of this kind and accordingly we had inserted in the Indian Constitution an express provision empowering the President to appoint, from time to time, a commission to investigate the position of the backward classes. I added that we had gone further and had actually anticipated one of the recommendations of the President's Committee. The committee had recommended that there should be a special section in the Department of Justice, both at the Centre and in the States, to protect the civil rights guaranteed by the Constitution. We have provided in the Indian Constitution for the appointment of Special Officers for minorities, both at the Centre and in the provinces for a similar purpose. At the end of the interview, the President said, "I am very greatly interested and should like to have, if I may, a copy of your Constitution", adding humorously that he might borrow a point or two from us. He also expressed a desire that I might stay a little longer and see some of the more prominent Senators; but, of course, my programme made this impossible. He assured me that whatever assistance or material I required from the State Department would be gladly given.

On November 20 and 21, I saw Dr. Jessup (Professor of International Law, Columbia University), Professor Mirkine (Constitutional Consultant, United Nations), Dr. Hamburger (Secretary-General, United Nations Year

Book of Human Rights), and Professor Dowling (Professor of Constitutional Law, Columbia University). I had detailed discussions with each of them. Both Dr. Jessup and Prof. Dowling regard as very important the amendment giving power to the Centre to legislate on a subject which is normally provincial if it has come to be of national importance.

RESULT OF DISCUSSIONS IN DUBLIN AND LONDON

I arrived in Dublin in the early hours of the morning on November 26, 1947. I first saw Mr. Boland's Private Secretary (Mr. Boland is Secretary in the External Affairs Department of the Government). He mentioned in the course of conversation that Ireland was greatly surprised at India's attitude on Ireland's application for membership of the United Nations. I told him that India's attitude had been misunderstood and that he must await the full report of Mrs. Pandit's speech. I then went and saw the Attorney-General, with whom I discussed various constitutional details. He informed me that some of the fundamental rights guaranteed in the Irish Constitution were proving very inconvenient, particularly the one relating to property. This came under consideration recently in the Irish Supreme Court in connection with the Sinn Fein Funds Act. The Act related to certain trust moneys which were lying in deposit in court. The moneys belonged to the Sinn Fein organisation. While they were in court, certain persons claimed them as honorary treasurers of the organisation and while the claim was pending, the Irish Parliament passed an Act discharging the pending action (after payment of costs etc. to the plaintiffs) and vesting the moneys in a Board of which the Chief Justice of the Supreme Court was made the Chairman. The Act gave the Board absolute discretion to pay the moneys to the members of various armed forces and their dependants who might be in needy circumstances. The Supreme Court held that the Act was unconstitutional on the ground that it took away the property which might have belonged to the plaintiffs and vested it in the Board; however desirable might be the objects of the Act, it was said to be in conflict with the rights of property guaranteed in the Irish Constitution. Certain other cases too have led to the feeling that the fundamental rights have been expressed in too broad terms.

The Attorney-General also told me that the system of proportional representation, which had been provided for in various parts of the Irish Constitution, had worked very unsatisfactorily. It had resulted in multiplying groups in the legislature, often compelling coalition Governments in which no one could be certain of the continued allegiance of a particular group, with the result that the administration was greatly weakened. Steps were now being taken, without amending the Constitution, to minimise this inconvenience by reducing the number of members in each constituency to three. Hitherto, some constituencies have had as many as nine members

so that a small group which could command the votes of even a tenth of the electorate could secure representation in Parliament. In the proposed redistribution, 22 constituencies will have 3 members and the rest 4 each.

The Attorney-General then mentioned that the provisions relating to functional representation in the Irish Senate had also given trouble : not so much the provisions in the Constitution itself as the subsidiary provisions relating to panels. Under the Irish Constitution, the Senate consists of 60 members of whom 49 have to be elected by a system of functional representation from various panels. It appears that hitherto all the 49 members have been regarded as forming a single constituency, and the total number of voters has been between 50 and 200. This has resulted in a quota of about four so that any member can make sure of his election by making sure of four voters. Such a system facilitates corruption and the Irish Parliament has now under consideration a Bill for altering it. I understand the result of the Bill will be : (a) to break up the existing single constituency into a number of separate constituencies, and (b) to increase the number of voters.

Finally, he told me that he was hopeful that sooner or later, Northern Ireland and Southern Ireland would be reunited. Northern Ireland consists at present of six counties, in two of which the Nationalists (mainly Catholics) are already in a majority. In the other four, Nationalists form about 35 to 40 per cent of the total population : but as the Catholics are multiplying at a much faster rate than the Protestants, and as the Protestants' immigration has also at the same time almost ceased, it will not be long before the six counties taken together show a Nationalist majority. He also told me that although Southern Ireland has at present only seven per cent Protestants, the minority is treated not merely fairly but magnanimously, and that the Protestants themselves had paid generous tributes to the Government for the manner in which their interests had been recognized. This should facilitate reunion.

In the afternoon, I had the privilege of an interview with Mr. De Valera, who was most cordial and considerate. He told me that, if he had a chance of rewriting the Irish Constitution, he would make three changes: (i) He would do away with proportional representation in any shape or form. He preferred the British system, as it made for strong Government. (ii) He would revise the provisions regarding functional representation in the Senate. (iii) He would make the right of property guaranteed in the constitution expressly subject to laws intended for the general welfare. So far as we had copied these provisions in the Indian Constitution, we might make similar changes. As regards the other provisions in our draft, he had two comments : (1) Four years as the maximum life-time of the legislatures is far too short a period. In his experience, he had found that, under a parliamentary system of government, Ministers required at least one year at the beginning of their term to acquaint themselves with the

details of administration, while the last year of the term was occupied with preparations for the next general election. Thus, with a four-year term, they would only have two years for effective work which was much too short for any kind of planned administration. He would suggest a term of not less than five years for the legislatures. (2) The period of three years provided for the amendment of the Constitution by a simple Act of Parliament is also far too short. Here again, he would suggest a period of not less than five years.

Towards the end of the interview, I mentioned to Mr. De Valera (as requested by Mrs. Pandit) that there had apparently been some misunderstanding about India's attitude on Ireland's application for membership of the United Nations. He replied that he himself was aware of the true position that the matter voted on related only to procedure, but that there had been misunderstanding in certain other quarters. [I immediately cabled to Mrs. Pandit to have a copy of her speech sent to the External Affairs Department in Ireland and this was done.]*

After leaving Mr. De Valera, I saw his Secretary, Mr. Boland, and I saw him again next morning. We had a long discussion in the course of which, among other things, he informed me that there was likely to be practically common citizenship between Ireland and the British Commonwealth on a basis of reciprocity, and there would thus be association between Ireland and the members of the Commonwealth on the basis of common citizenship.

I arrived in London on the 27th November, and interviewed in addition to the High Commissioner for India (Mr. Krishna Menon), Mr. Noel Baker (Secretary for Commonwealth Relations), Sir Stafford Cripps, and the Privy Councillors Sir John Beaumont and Sir Madhavan Nair. Mr. Noel Baker, discussing Commonwealth relations, mentioned to me that the members of the Commonwealth were now completely independent in their foreign relations, and, as the latest proof of this fact, he pointed out that in the recent voting at the meeting of the United Nations on the Palestine

*The Irish Prime Minister, Mr. Eamon de Valera, was asked by Mr. McBride, Republican leader, in the Dail (Parliament) today whether he could say why India opposed the admission of Ireland to the United Nations.

Mr. De Valera replied that it was wrong to suggest that India opposed the admission of Ireland. "I welcome the opportunity of saying this," he added, "because I know from the communications I have received from the Indian Government and from the Leader of the Indian Delegation at the Assembly that they are as anxious as we are that any misunderstanding that exists in this regard should be removed.

"The difficulties arose in connection with procedural matters. The fact is therefore that, far from opposing the admission of this country to the United Nations Organisation, the Indian delegates went out of their way to express friendship and goodwill towards Ireland. I want to take the opportunity of assuring our Indian friends that these feelings are cordially reciprocated by us."

[Reuter's message from Dublin, dated December 10, 1947.]

question, Canada, Australia and South Africa had voted for partition, India and Pakistan had voted against partition, while the United Kingdom had remained neutral. Whatever might have been the position at one time, it was now possible for a country to be completely independent even within the Commonwealth.

Sir Stafford Cripps asked me generally about the situation in India and Burma; we had no time for discussing any constitutional details. Sir John Beaumont and Sir Madhavan Nair desired to know exactly what India's attitude would be with regard to the appellate jurisdiction of the Privy Council. This is of course a matter for the Constituent Assembly. As regards pending cases, I learned from them that there were at least 60, possibly more, appeals already filed before the Privy Council, and Sir Madhavan Nair was anxious to know as early as possible the Constituent Assembly's decision as to their disposal. [I have since had information that 115 appeals are now pending in the Privy Council, of which 29 are ready for hearing.] As regards the age-limit of High Court Judges, Sir John Beaumont said that, in his own experience, he had at least on two occasions failed to get the best men from the Bar for appointment to the Bench, because, with the present age-limit of 60, they had no chance of earning a full pension. He thought that the age-limit should at least be 65 and observed that if a judge was not too old for the Federal Court at the age of 65, there was no reason to think that he was too old for the High Court. The volume of work before the Federal or Supreme Court, if it took over the existing Privy Council appellate jurisdiction, would hardly be less than the volume of work before any High Court. I mentioned to Sir Madhavan Nair the suggestion I had in mind for empowering the Supreme Court (on the analogy of the practice in the United States of America and in England) to call upon any retired judge of that Court (with his consent of course) to serve on any particular case. He could see no objection to this course. On the other hand, he thought that it would be an advantage to have the assistance of an experienced judge. A judge who was too old to be of any assistance would of course not be asked.

I place below a further list of amendments (Appendix II) which I think will be necessary on the basis of the discussions I have so far had.

I should perhaps also refer to some of the other activities in which I was engaged during my visit to the United States of America. As soon as I arrived at New York, I was struck by the almost complete lack of correct information about the happenings in India, and so I readily agreed to address a Press Conference at the United Nations Organization Secretariat at Flushing Meadows on the 3rd November. I made a brief statement (Appendix III) before a representative gathering of the leading pressmen in New York at that time, and also answered various questions about the new Constitution. I had also occasion to speak to a well-attended meeting of all the Indians, men and women, in Washington, both officials and

non-officials, on the 18th November, which was presided over by the Ambassador, Mr. Asaf Ali. I gave a brief account of the principles underlying the proposed new Constitution, and also answered a number of questions emanating from the audience. While in Washington, we visited the Library of the Congress with the special purpose of studying the organization and working of its Legislative Reference Service. A note which was prepared as a result of discussion with the authorities in charge of this organization will be found at Appendix IV.

APPENDIX I

AIR LETTER

Washington, dated the 11th Nov. 1947.

To

Constitution
New Delhi, India.

FROM

Sir B. N. Rau,
C/o Embassy of India,
Washington, D.C.

As the result of discussion in Washington and Ottawa I propose the following amendments :

1. At the beginning of clause 9 sub-clause (2) *insert* the words "Subject to the provisions of section 10".

2. To clause 10 *add* the following new paragraph :

No law which may be made by the State in the discharge of its duty under the first paragraph of this section and no law which may have been made by the State in pursuance of the principles of policy now set forth in Chapter III of this Part shall be void merely on the ground that it contravenes the provisions of section 9, or is inconsistent with the provisions of Chapter II of this Part.

The object of these amendments is to make it clear that in a conflict between the rights conferred by Chapter II, which are for the most part rights of the individual and the principles of policy set forth in Chapter II, which are intended for the welfare of the State as a whole, the general welfare should prevail over the individual right. Otherwise it would be meaningless to say, as clause 10 does say, that these principles of policy are fundamental and that it is the duty of the State to give effect to them in its laws. In the Constitution of the United States of America there are no express Directive Principles of State Policy, but the courts have developed what is equivalent thereto, namely, the doctrine of the "Police Power" which has been defined as the power "to prescribe regulations to promote the health, peace, morals, education, and the good order of the people, and to legislate so as to increase the industry of the State, develop its resources, and add to its wealth and prosperity". In the exercise of this power the State may make laws for the general welfare which would otherwise be inconsistent with the American Bill of Rights. The courts in India might have been able to develop a similar doctrine but for the language of clause 9 of the Draft Constitution. Hence, the amendments proposed.

3. In sub-clause 1 of clause 182, *add* the following as Item (c) :

(c) If the Council of States has declared by a resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that the Federal Parliament should legislate with respect to any matter enumerated in the Provincial Legislative List and specified in the resolution, then, to make laws for the whole or any part of the territories of the Federation with respect to that matter.

4. In clause 182 *add* the following sub-clause (3A) :

(3A) A resolution passed under clause (c) of sub-section (1) may be revoked by a subsequent resolution passed by a similar majority by the Council of States.

5. In sub-clause (4) of clause 182 after the words "Proclamation of Emergency" *insert* the words "or the passing of a resolution under sub-section (1)"; and after the words "the proclamation" *insert* the words "or the resolution".

6. In clause 183 for the words "except where a Proclamation of Emergency has been issued under" *substitute* the words "except as provided in".

The object of these amendments is to remove defect similar to that which has disclosed itself in the Canadian Constitution. For example, under the draft Indian Constitution, agriculture, co-operative societies and the production, supply and distribution of goods are all exclusively provincial subjects. Suppose, however, that in order to raise the standard of living of the Indian people as a whole, a system of co-operative farming and of price control of agricultural products on a national scale, and not merely in a single province, becomes desirable; in that event, the Centre should not be precluded from legislating in respect of the above subjects. As a safeguard against unwarranted encroachment on the provincial sphere, a resolution by a special majority of the Council of States, which for the most part represents the units of the Federation, is desirable. The provision in clause 183, depending as it does upon consent of each of the units concerned, may prove inadequate. The essence of the matter is that where legislation is called for on a national basis, the Central legislature should have power to enact it without amending the Constitution. Such legislation may be needed not only in such spheres as education, co-operative farming, or public health, but also in a matter which is coming to be regarded as one of national and indeed almost international importance, namely, the safeguarding of the civil rights of all citizens: *e.g.*, removing the social disabilities of Harijans. So far only certain provinces have passed their own Acts for the purpose; it would obviously be in India's interest, particularly in the international field, to be able to point to an all-India Act in force throughout the country. A provision such as the one now proposed would enable the Central Legislature to enact such a measure. The Report of the President's Committee on Civil Rights, just published in the U.S.A., recommends that the National Government of the United States must take the lead in safeguarding the civil rights of all Americans and that Congress must enact the necessary legislation.

APPENDIX II

FURTHER AMENDMENTS TO THE DRAFT CONSTITUTION

1. In clause 60 (10), clause 113, clause 119 (3), and clause 130 (9), for the word "four" *substitute* the word "five".

(Note : De Valera is very clearly of the view that 4 years is much too short a period for the life of the legislature. Under a parliamentary system of

government, ministers take at least a year to acquaint themselves with the problems they have to handle; moreover, the last year of the term is taken up with preparations for the next general election. That means that if the maximum term is only four years, ministers have only two years in which to devise and carry out any plans of their own. This is much too short a period. Hence the suggested substitutions. It will be noticed that the President has a five-year term of office under clause 44.)

2. In clause 82 (4), for "the Chairman of the Council of States", *substitute* "the Speaker of the House of the People".

(In the United States of America, it is the Speaker of the House that presides at joint sittings.)

3. In clauses 87 (4) and 164 (4), after the words "in the same session" *insert* the words "and with the concurrence of not less than two-thirds of the members present and voting in each House".

(*Note*: Under the Constitution of the United States of America Art. I 3.6 and Art. II 4, a judge cannot be removed by impeachment except with the concurrence of at least two-thirds of the members present in the Senate. In the New York Provision on the subject which has just been approved, removal by a Court of Inquiry requires the concurrence of not less than two-thirds of the members of the Court. The amendment now proposed embodies a similar safeguard.)

4. *Insert* as clause 90A:

90A. Notwithstanding anything contained in this Chapter, any person who has been a judge of the Supreme Court may at any time after retiring from that office, upon the written request of the Chief Justice or the acting Chief Justice, attend at the sittings of the court for such period as may be specified in the request; and while so attending, he shall possess the powers and privileges and shall discharge the duties of an associate judge of the Supreme Court.

5. In clause 164 (2) for the words from "sixty years" to the words "the Provincial legislature" *substitute* the words "sixty-five years".

(*Note*: Sir John Beaumont, at one time Chief Justice of the Bombay High Court and now a member of the Judicial Committee, is clearly of the view that the age-limit of the High Court judges should be 65 because in his own experience he found that he was unable to get, on at least two occasions, the best members of the Bar to accept appointments as judges, as the existing age limit was too low to enable them to earn full pension.)

6. In clause 234 (2) for the words from "and all appeals" to the words "the Supreme Court", *substitute* the words "Provided that all appeals and other proceedings pending before His Majesty in Council on the said date may be disposed of as if this Constitution had not been enacted".*

(*Note*: It has been ascertained that at present 115 appeals are pending in the Privy Council of which 29 are ready for hearing. It is obvious that the transfer of these cases back to India will mean unnecessary expense, delay and inconvenience to the litigants.)

7. In the Draft Constitution, for the words "puisne judges" wherever they occur, *substitute* "associate judges".

(The latter term is used in the United States of America and is more dignified.)

*In view of the Federal Court (Enlargement of Jurisdiction) Act, 1947, recently passed by the Constituent Assembly (Legislative), the number of these cases is likely to be very small.

APPENDIX III

I have been in this country (the United States of America) for only a few days, but have realised that there is need for fuller information here about present-day India. Inevitably, much prominence has been given in the press to the recent disturbances; but without seeking to minimise their gravity, I should like to plead for a sense of proportion. There are, in India and Pakistan, thirteen Governors' Provinces (corresponding to the States in this country), six Chief Commissioners' Provinces (corresponding to the territories of the United States) and over 500 Indian States large and small. The recent disturbances are confined to two Governors' Provinces and one or two Indian States. Even the mass migrations which have been taking place represent about two *per cent* of the total population. Over the rest of India there is peace and people go about their business as in normal times.

Even in the disturbed areas, the administration has found time for other tasks than that of restoring order. For example, in Delhi itself, on October 18, that is, just about a fortnight ago, Government extended to the province a law removing all legal disabilities of "*Harijans*" (untouchables) and punishing any discrimination against them as a crime. This is sufficient to show that the law and order problem is not yet such as to prevent attention being given to important social legislation. Nor has it interfered so far with our plans for the framing of the new Constitution.

The draft of the new Constitution is ready and a committee is at present in session in Delhi examining it and putting it into final shape before it goes to the Constituent Assembly. The Constituent Assembly is scheduled to meet early in December and we expect that the Constitution Act will be passed by the Assembly before the end of January 1948. Of course, it will take some more time to have the new Constitution in actual operation.

Needless to say, we have borrowed a good deal from the Constitution of the United States of America: the idea of a Bill of Rights enforceable through the courts; the provision for an elected President; the provision for an elected Vice-President who is also to be *ex-officio* Chairman of the Upper House; the idea of an indissoluble Upper House, one-third of which is to be renewed every two years; and so on. In the course of my present visit, I hope to study the working of some of these provisions in the country of their origin, so that we may profit by your experience while copying your example.

APPENDIX IV

When we were in the United States of America last month, we visited the Library of the Congress in Washington, D.C., to study the working of its Legislative Reference Service, about which we had heard a good deal in India. A letter which was given to us by His Excellency Dr. Grady, the United States Ambassador in India, addressed to Dr. Griffiths, the Director of the Legislative Reference Service, was of considerable assistance to us.

The Legislative Reference Service as such was not set up until 1914. That is not to say that reference functions were entirely unknown in the Library of the Congress before then—within their limitations of time and personnel, the Reading Rooms, the Law Library, Documents Division, Bibliography Division, all responded to the Congressional calls for assistance. But in course of time, legislators all over the country were becoming increasingly aware of the complexity of the business of legislation, and the importance of having at hand the fullest possible data regarding subjects under consideration. In many of the States in the United States of America this realization led to the formation of Legislative Reference Bureaux, charged often

with the dual function of seeking out and presenting the basic facts pertaining to the discussion of any given legislative subject-matter, and of drafting legislation designed to give effect to the ideas of the legislators. In the National Legislature also, a similar need was felt, and it was this which led ultimately to the establishment of a distinct unit of the Library as the Legislative Reference Service.

The Legislative Reference Service combines a variety of functions. It has a definite programme of indexing and publishing, laid down by the Congress. It operates a combined reading room and work room for members. But the more significant function it performs is research and reference as and when required by the Congress, its committees or members. The Service seeks to supply any information a member or a committee of the Congress may require.

The diagram appended to this report will show the main sections into which the Legislative Reference Service is divided. At the head, there is the Director, who is responsible to the Librarian of the Congress. Administratively, the Assistant Director of the Service is the officer directly responsible for the work of six of the seven sections, viz., (1) the Congressional Reading Room, (2) the Abstract Unit, (3) the Federal Law Section, (4) the State Law Section, (5) the Information Section and (6) the General Research Section. He is ultimately responsible for (a) the receiving of enquiries, (b) their assignment to appropriate sections, (c) the proper handling of requests from members, and (d) the evaluation of all reports prepared by the research staff for style, scholarship and impartiality. The remaining section, viz., the Advanced Research Section, works directly under the Director. It is comprised of highly paid staff (some of the men are paid \$ 10,000 a year), employed in the capacity of advisers to the committees of Congress and their research secretaries. Each of the top posts, it appears, has been set up in response to or in expectation of long-term problems facing the Congress. Thus, among the first to be filled, were those in labour, international relations, foreign trade, taxation and American Government. The Senior Specialists as they are called hold the highest professional classification in the administrative service.

1. *The Advanced Research Section*: This section meets weekly to discuss what all problems may be before the Legislative Reference Service, whether they be the preparation of a major study such as "communism in action" or the classification of clerical personnel. The Director told us that the wealth of experience and talent presented during these meetings has been of inestimable value in conducting the affairs of the Legislative Reference Service. Each of the Senior Specialists has a Research Secretary and an Assistant who is qualified by college training to do some of the basic research and who can also handle stenographic assignments, but ordinarily the Senior Specialists work on their own.

2. *The General Research Section*: The General Research Section comprises researchers of a lower grade, roughly, persons getting \$ 3,000 to \$ 7,000 a year. The largest group within the section is the Economics Unit covering such fields as agriculture, business organization, international trade, labour, transportation, national defence, conservation and forestry. There are, in addition, analysts in political science, public administration, American and foreign journals, sociology, history, religion, literature, etc. A special feature of this section is that there are two counsels, one in Economics and the other in Political Science, to provide scholarly guidance to the staff of this section. When a request comes in, the researcher confers with the appropriate counsel as to the method of approach. Other conferences are also held, as the work proceeds, with a final check being given to the completed report by one of the counsels and the Assistant Director.

3. *The Information Section*: This is a comparatively small unit where very extensive clipping and filing services are carried on. Periodicals of all sorts and

shades are carefully perused, with the articles conceivably related to the needs of the members clipped out and filed according to the general library system. Thus a Congressman or Secretary desiring some information on "Commercial Aeronautics" would have immediately available a broad sample of opinion from the American and foreign journalistic worlds. Requests for information are handed in to an officer or request-taker, who passes them on to the Information Section. The slip is copied in the section and passed on to one of the assistants, who after compiling the necessary information submits it to the head of the section, who, in his turn, passes it on to the Assistant Director. This section also prepares non-analytical reports occasionally. The section also provides library and bibliographic service for the Legislative Reference as a whole. The section maintains a small sectional library of its own but for the most part it depends upon the bigger library of the Congress. Where copies of a particular article or pamphlet are not available, steps are taken to send cyclostyled or even photostat copies of the same to those who seek information.

4. & 5. *Federal and State Law Sections*: These are two highly technical sections, which attend to the legal side of the Legislative Reference Service. As their names indicate, the Federal Law Section deals with the laws passed by the Congress, while the State Law Section is responsible for indexing and digesting the Bills and Acts of the 48 State Legislatures. These two sections have quite a number of publications and journals to their credit and are manned by competent lawyers. The main work comprises indexing, digesting and analysing Federal and State Laws. They also attend to the work of the Judiciary Committees and sometimes do some drafting work. The Federal Law Section produces a comprehensive "Bill Digest" and also the summaries of committee hearings. Here a Senator can bring himself up-to-date on recent legislative proposals and proceedings within the various committees. A considerable amount of legal research is performed by these sections on specific requests from members of the Congress.

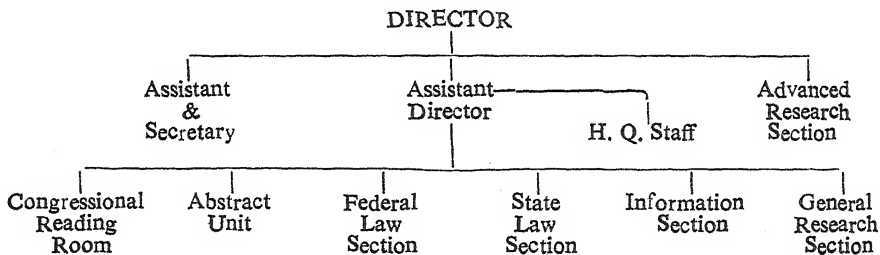
6. *The Abstract Unit*: This is the smallest of the sections of the Legislative Reference Service. It provides another short-cut for Congressmen and staffs by 'boiling down' to one or two pages significant magazine articles and books currently appearing on major problems of the day. These abstracts are sent out regularly to members and others interested in them. Among the subjects recently covered by such abstracts are atomic energy, labour problems, Germany and United Nations.

7. *Congressional Reading Room*: The Legislative Reference Service also runs a Reading Room exclusively for the members of the Congress, where they may do their own research. A useful collection of the latest books on public affairs, fiction, biographies, etc., is housed at one end of the room. There is a trained staff located in the room, to assist the members in finding out quotations or articles from recent newspapers and perform such other type of reference work as is required by members or by Secretaries.

The Legislative Reference Service is now a very important wing of the Library of the Congress, and is considered to be an indispensable adjunct of the Library. The Director told us that the necessity for such a Service was felt more in America, as the legislature was wholly independent of the executive departments, and had to depend upon its own resources. The members of the Congress were entirely dependent upon the Legislative Reference Service, not only for getting useful information but also for drafting and for the ultimate publication of the laws passed by the Congress. The Director also impressed upon us that the Service was a non-party, non-political organization and catered to the needs of Congressmen, irrespective of party affiliations. We found that we were not the only persons interested in the working of the organization; they were getting inquiries about the set-up from other countries also.

There is no doubt that the establishment of a Research Section on the lines of the Legislative Reference Service in the United States of America would be of immense help to the legislators in India. We are, of course, not in the same position as the United States in regard to the relations between the executive and the legislature. We have a system of responsible government, under which the legislature can always get information from the executive departments. But even then, with the increase in the responsibilities of the legislature itself and with the widening of the franchise, as is contemplated under the new Constitution, the new legislators would find it necessary to have ready at hand a service which would give them all information and assistance in their day-to-day work. We have already got in the Secretariat of the Constituent Assembly a small Research and Reference Section which has been functioning quite efficiently during the past one year or so. We may develop this section by adding to it one or two sub-sections. According to our present needs, we need not have either an Advanced Research Section or a Legal Section. It would be sufficient for the time being to have a General Information Section, a Research Section and perhaps an Abstract Unit. These may all work under one officer who may be responsible not only for the work of the research division but also will be in general charge of the library of the legislature. Further details of the scheme can only be worked out after we know of the general set-up of the organization of the future Indian legislature.

LEGISLATIVE REFERENCE SERVICE AT A GLANCE



Advanced Research Section

(1) Preparation of extensive basic data studies for Congressional Committees and Members of Congress.

(2) Furnishing assistance in the preparation of committee report; aiding in the organization of Congressional hearings, including suggestions as to witnesses and analyses of material presented.

(3) Handling of difficult and involved inquiries for individual Members of Congress.

(4) Consultation with staff of other sections on the economic and political aspect of their inquiries.

Personnel : (1) Specialist (head analyst) in Foreign Relations. (2) Specialist (head analyst) in Labour. (3) Specialist (head analyst) in Taxation and Fiscal policies. (4) Chief of the Federal Law Section. (5) Director of the Legislative Reference Service, *ex-officio*.

Congressional Reading Room

(1) Maintaining a reading room for the use of Congressmen and their families, which includes (a) selected significant recent books on public questions, (b) selected periodicals, (c) selected fiction, (d) a small reference collection of titles most frequently used by Congressmen and their Secretaries in their research.

(2) Answering simple Congressional inquiries. These are largely telephoned or personal requests for books or for information to be found in readily accessible sources. So far as is compatible with the courtesy due to Members of Congress using this channel, inquiries involving reference analysis are referred for assignment to the service headquarters, not calling for reference analysis but requiring immediate action, are referred to Congressional Reading Room, which is open until 10 P.M.

Personnel: (1) Custodian. (2) Chief Assistant (Assistant Custodian). (3) Three Assistants (Junior Librarians).

Federal Law Section

(1) Preparation and maintenance of the card index to Federal statutes as a major tool for answering inquiries in the field of Federal law.

(2) Preparing and publishing the Digest of Public General Bills.

(3) Answering inquiries in the field of Federal law or dealing with legislative bills and Congressional documents in general.

(4) Preparing the report of committee hearings relating to pending legislation of general public interest.

(5) Collecting and servicing published committee hearings.

Personnel: (1) Section Chief. (2) Acting Assistant Section Chief. (3) Two Indexers. (4) Senior Digester. (5) Two Junior Digesters. (6) Research Assistant. (7) Reporter. (8) Hearings Custodian. (9) Assistant Hearings Custodian. (10) Action Clerk. (11) Three Clerk-Typists.

General Research Section

(1) Preparation of basic data studies for committees and Members of Congress.

(2) Answering inquiries in the fields of economics, education, history, international law, international relations, Latin-American affairs, Political Science and public administration, sociology, taxation and public finance.

(3) Preparation of Public Affairs Abstracts.

(4) Miscellaneous "ready reference" work such as locating city addresses, furnishing dates, definitions, names of Corporation Officers, etc.

(5) Consultation with the staff of other sections on the economic and political aspects of their inquiries.

Personnel: (1) Section Chief. (2) Research Counsel. (3) Executive Officer. (4) Specialist in Education (Social Science Analyst). (5) Specialist in Latin America Affairs (Associate Reference Librarian). (6) Specialist in International Relations (Associate Reference Librarian). (7) Specialist in Anthropology and Sociology (Associate Reference Librarian). (8) Specialist in Taxation and Finance (Associate Reference Librarian). (9) Associate Economist (Associate Reference Librarian). (10) Specialist in International Economics (Associate Reference Librarian). (11) Assistant Economist (Assistant Reference Librarian). (12) Specialist in History (Assistant Reference Librarian). (13) Specialist in Political Science and Public Administration (Assistant Reference Librarian). (14) Junior Sociologist (Junior Reference Librarian). (15) Junior Economist (Junior Reference Librarian). (16) Junior Political Scientist (Junior Reference Librarian). (17) General Researcher (Junior Reference Librarian). (18) Secretary of the Section (clerk-typist). (19) Two Typists (clerk-typist). (20) Two Typists (Junior clerk-typists).

Information Section

(1) Maintaining and servicing reference files of material likely to be useful in answering inquiries, including clippings, pamphlets and manuscripts.

(2) Furnishing consultative facilities concerning materials in the files.

(3) Answering inquiries as assigned. Such assignments depend upon (a) usefulness of existing files material, (b) specialized competence of individual staff members, (c) pressure of work load.

(4) Librarian to the Service. This carries with it responsibilities for—

- (a) Custody of the book collections;
- (b) Checking in of all serials and periodicals;
- (c) Servicing of the specialists and other researches;
- (d) Recommendations of purchases for the collections;
- (e) Relations with other divisions concerning book service.

Personnel: (1) Chief. (2) Assistant Chief. (3) Service Librarian. (4) Service Bibliographer. (5) Reference Assistant. (6) Reference Assistant. (7) Index Clerk, (8) File Clerk. (9) Clerk. (10) Three Library Assistants.

State Law Section

- (1) Preparing and publishing the Biennial State Law Index.
- (2) Preparing and publishing digests of recent legislation and trends therein.
- (3) Answering inquiries in the field of State Law and governance.
- (4) Consultation with the staff of other sections on aspects of their inquiries relating to the States.

(5) Maintaining liaison with the Council of State Governments for exchange of services.

Personnel: (1) Chief. (2) Assistant Chief and Indexer-digester. (3) Indexer-digester. (4) Four Indexer-digesters. (5) Indexer-digester. (6) Indexer-digester as 'trainee'. (7) Editorial Clerk. (8) Assistant Editorial Clerk or "Reader", for comparison of laws. (9) Two clerk-typists.

Abstract Unit: (1) Editor. (2) Secretary. (3) Bibliographer. (4) Professional staff.

PART TWO
THE COMMITTEE ON CHIEF COMMISSIONERS'
PROVINCES
July-October 1947

CHIEF COMMISSIONERS' PROVINCES July-October 1947

[The report of the Union Constitution Committee (see Vol. II, Document No. 18) was considered by the Constituent Assembly at its July 1947 session. During the consideration of Part VIII of the report, relating to directly administered areas, on July 30, 1947, Deshbandhu Gupta moved an amendment for the appointment of a committee "to suggest suitable constitutional changes to be brought about in the administrative systems of the Chief Commissioners' Provinces so as to accord with the changed conditions in the country and to give them their due place in the democratic constitution of free India". The amendment was unanimously adopted by the Assembly (see C. A. Deb., Vol. IV, pp. 998-1004).

On the following day, the President of the Constituent Assembly appointed a committee in pursuance of the amendment. The committee consisted of seven members, namely, Pattabhi Sitaramayya (Chairman), Gopalaswami Ayyangar, Deshbandhu Gupta, K. Santhanam, C. M. Poonacha, Mukut Bihari Lal Bhargava and Hussain Imam. The committee held three meetings on August 21, September 1 and 30. After examining the existing political and administrative set-up of the directly administered areas, the committee submitted its report to the President of the Assembly on October 21. The report could not be discussed by the Assembly, but it was placed on the table of the House by Ambedkar on November 4, 1948. The text of a memorandum on Delhi, a note on Coorg and a memorandum prepared by N. Gopalaswami Ayyangar on the future constitution of Chief Commissioners' Provinces, the minutes of its meetings and its report are reproduced below.]

(I) A MEMORANDUM ON DELHI PROVINCE

Preliminary: Delhi like other Chief Commissioners' Provinces is a direct responsibility of the Government of India. The different departments of the Government of India directly deal with corresponding matters in the office of the Chief Commissioner, Delhi. There has never been any co-ordination between the various departments in the Government of India so far as Delhi is concerned.

Area and population : The Delhi Province has an area of 574 square miles and a population of 9,17,939 (1941 census figures). The population has increased by about 50 per cent during the war years (1941-45) and the present population is about fifteen lakhs. It has one tahsil and one sub-tahsil and about 350 villages.

Advisory Council : Very recently the Government of India has constituted an Advisory Council to advise the Chief Commissioner. Its powers and scope are very limited and it has no say in the day-to-day administration of the Province.

Administrative set-up : The Chief Commissioner of Delhi who is appointed by the Home Department of the Government of India is the *ex-officio* Inspector General of Police in the Province and has under him a senior superintendent of police and several superintendents of police and other officers and non-commissioned officers and men.

District Administration : Delhi has a Deputy-Commissioner who is also the District Magistrate. A number of stipendiary and honorary magistrates, a tahsildar and naib tahsildars work under him.

Judicial : There is a District and Sessions Judge who has under him a senior sub-judge and several subordinate judges and a small cause court judge.

Medical and health : These two subjects are administered by a Director of Health Services who has under him a Chief Medical Officer and a Chief Health Officer. On the curative side, that is on the medical side, there are various hospitals, while on the public health side there are various health centres.

Delhi Improvement Trust : There is an Improvement Trust for the Delhi Province, but most of the activities of this Trust have been mainly fiscal. Only one improvement scheme in the city has been undertaken which is still in progress.

Education : The Education Department is in charge of the primary, secondary and higher secondary education of the Delhi Province, Ajmer-Merwara and Central India. There is a Board of Higher Secondary Education which is an examining body.

For higher education there is the University of Delhi.

Representation in legislature : In the 1935 Act, the Delhi Province had one seat in the Central Legislature. The Central Assembly having come to an end after the 15th August, 1947, the representative of Delhi in the Central Legislature is a member of the Constituent Assembly of India.

Application of laws : The Delhi Province is largely governed by laws in the framing of which the people of Delhi have no voice. By virtue of the powers invested under the Delhi Laws Act, the Chief Commissioner of Delhi determines the application of all laws by means of an issue of a notification in the Gazette of India. Generally all Punjab laws are made applicable to Delhi.

Services : The Delhi Province has no cadre of its own. Generally members of the Provincial Civil Service from the Punjab hold all the provincial posts such as magistrates, judges, revenue officers, excise officers, police sub-inspectors and other high ranks of police force. Even the municipal services are manned by people taken on deputation from the neighbouring United Provinces and the Punjab.

Municipal Administration : For the city of Delhi there is a Municipal Committee mainly elected, with its own President. The District Board serves the rural area. For New Delhi there is a separate Municipal Committee which is wholly nominated. There are other nominated committees for certain areas which are termed Notified Area Committees.

Revenue and Expenditure : Budget estimates of the Delhi administration for 1947-48 show that the total estimated income is Rs. 2,12,56,500 while the total estimated expenditure is estimated to come to Rs. 1,99,80,400.

Demand for a new constitution and extension of the Province : There has been a demand for the extension of Delhi Province so as to include the Ambala division from the Punjab and Meerut and Agra divisions from the United Provinces with the district of Rohilkhand. This demand has the backing of popular elements in the Province.

Up to the end of 1911, Delhi was a part of the Punjab and was constituted into a separate Chief Commissioner's Province when it became the capital of India. Linguistically and culturally, the people of Delhi are akin to the people of Ambala, Meerut and Agra divisions and the ideal solution according to popular belief is to amalgamate these areas and form a separate province with Delhi as capital.

(II) A NOTE ON COORG

Introduction : The Chief Commissioner's Province of Coorg is situated on the Western Ghats surrounded by Mysore State and the districts of Malabar and South Kanara of Madras Presidency. The river Cauvery which is known as the southern Ganges has its origin in Coorg. Its hills and dales are very picturesque. The country is blessed with nature's bounties and the soil is very fertile. The forests are very rich with the luxurious growth of sandal, teak and other valuable species of timber. It covers an area of 1,583 sq. miles, with a population of 168,726 as per 1941 census. It is possible that the population figure might have gone up now to about two lakhs (200,000). The principal crops grown here are paddy, coffee, cardamom, pepper, orange, rubber and tea. All the crops are rain-fed inasmuch as this country enjoys an annual rainfall between 300 and 400 centimetres.

History : Tracing back the history of Coorg, it is found that this country was inhabited by a race of *kshatriyas* from time immemorial. The rule of Palayagars in Coorg was changed into that of independent Rajas in

1583 which continued up to 1834 when it was annexed by the British. Ever since, it remained as a separate entity administered directly by the Central Government. In the year 1924 Coorg was granted an elected Legislative Council with recommendatory powers and the finances of the Province were separated from those of the Central Government. Till 1939 the Resident of Mysore State functioned as the Chief Commissioner of Coorg as well. Since then Coorg has a whole-time Chief Commissioner.

Finances: Coorg has been rather fortunate in having surplus budgets since 1834 except for a short period during the days of the last depression. It can be safely said that from 1834 till the separation of finances in 1924 Coorg had surrendered to the Central Government nearly a crore and a half rupees out of the annual surpluses. The province was not given any opening balance at the time of the inauguration of the Legislative Council in 1924. Till the commencement of the depression in 1929 the province had accumulated a surplus of six lakhs (Rs. 600,000). The fall of revenue due to the effects of depression and the increase in expenditure due to the creation of a number of unnecessary posts in Government, caused deficit budgets for about ten years. During this period the Central Government came to the help of the Provincial Government to the extent of Rs. 14 lakhs (Rs. 1,400,000), as a result of Sir Otto Neimeyer's award. During the period of the war and after, Coorg has been able to accumulate a big surplus of Rs. 48 lakhs (Rs. 4,800,000). The loss that will accrue by the introduction of prohibition can be easily met by the levy of agricultural income-tax. At any time in the future Coorg can be certain of a stable revenue of Rs. 36 lakhs (Rs. 3,600,000) comprising Rs. 15 lakhs (Rs. 1,500,000) from Central Excise, Rs. 12 lakhs (Rs. 1,200,000) from agricultural income-tax, Rs. 6 lakhs (Rs. 600,000) from forests and Rs. 3 lakhs (Rs. 300,000) from land revenue. There are other sources of revenue which if tapped properly would increase the revenue to Rs. 40 lakhs (Rs. 4,000,000). There is room also for reduction in the cost of administration.

Present progress: The compactness of the province has helped considerably the efficiency of administration. Regarding developments in education, medical help, co-operation and veterinary aid, Coorg is fairly developed. There is great scope for development of cottage and other industries in the province. The general level of awakening of the masses, the existence of co-operative societies in every village and village panchayats in many places make it ideal to try a more democratic constitution in Coorg.

The population of Coorg is almost entirely dependent on agricultural and allied activities for its support. Of the total area a little more than one-third is covered by reserved forests and another one-third by hills, rivers and waste-land. Only 30 *per cent* of the total area is available for cultivation. Though the cultivable area is small the Province is rich in natural products. It produces rice, coffee, cardamom, pepper, fruits and

vegetables in considerable quantities. Apart from that Coorg is fortunate in having in it forests, and particularly sandal.

Administration : Prior to 1924 Coorg was administered in the same manner as Delhi and Ajmer-Merwara are administered today. In the year 1924, the Province was granted a new constitution. A Legislative Council composed of 15 elected and 5 nominated members with the Chief Commissioner as President was inaugurated in January, 1924. The council has the same powers with regard to moving of resolutions, asking questions and the discussion of the annual financial statements as the Legislative Councils of major Provinces had in the last reforms.

The Commissioner of Coorg is generally a member of the Indian Civil Service and is borne on the cadre of the Madras Presidency. Apart from being the head of the Land Revenue Department, he combines in his person the offices of District and Sessions Judge, Inspector General of Police, Inspector General of Prisons, Inspector General of Registration, Superintendent of Stamps, Commissioner of Excise, Commissioner of Income-tax etc. etc., and exercises general supervision over practically all departments of the administration. In relation to the Legislative Council he functions as the Finance Member, as the *ex-officio* Chairman of the Public Accounts Committee. The Commissioner is assisted by an Assistant Commissioner who as the District Magistrate for Coorg, exercises the power of Collector in revenue matters and generally assists the Commissioner in the administration of the other departments under his control.

Future of Coorg : The majority of the people of Coorg prefer the province to continue as a separate administrative unit as at present on the same status as other administrative provinces.

Another view about the future of Coorg is that with the normal revenue of Rs. 15 lakhs (Rs. 1,500,000), the province can never be self-supporting. It is suggested by those who hold this view that the financial position of the province will become much worse after the recommendations of the Pay Commission are adopted.

(III) MEMORANDUM ON THE FUTURE CONSTITUTION OF CHIEF COMMISSIONERS' PROVINCES BY N. GOPALASWAMI AYYANGAR September 1, 1947

I. LEGISLATURE

1. Each of these minor provinces should have a legislature.
2. Provincial legislature should, of course, not have power to make laws for federal subjects. Subjects (included both) in the provincial and the concurrent lists in the new Constitution are to be treated—all of them—as concurrent in respect of these minor provinces. This will enable any laws made by the Federal legislature for these provinces in respect of all these

subjects to take precedence over laws passed by the provincial legislatures.

3. All laws passed by the provincial legislature should receive the assent of the President of the Federation.

4. The budget of the province, after being voted by the provincial legislature, should receive the approval of the President of the Federation before it becomes operative.

II. EXECUTIVE

1. Each minor province to have a Head corresponding to the Governor of a major province. He may be given a suitable designation different from that given to the Governor of a major province. He should be appointed by the President of the Federation and should be responsible to him. He will act only on the advice of his Ministers. In case of difference between him and the Ministers on any important issue, the matter should be referred to the President of the Federation for decision. He will submit, with his remarks, to the President of the Federation, all laws and the budget as passed by the provincial legislature for assent or approval.

2. There should be a Council of Ministers not exceeding three for each of these provinces. They should be appointed in the same manner as Ministers in the major provinces, subject to the proviso, that the action of the Head of the province in making such appointments will be subject to the control of the President of the Federation. The Ministers should be collectively responsible to the legislature.

III. JUDICIARY

None of these three provinces can afford to have a High Court of its own. The powers of a High Court should be exercised:

- (a) in the case of Coorg, by the Madras High Court,
- (b) in the case of Delhi, by the East Punjab High Court, and
- (c) in the case of Ajmer-Merwara, by a Judicial Commissioner appointed by the President of the Federation.

Rest of the judiciary, from the District and Sessions Judge downwards, might be organized on the same lines as in the major provinces.

IV. ADMINISTRATIVE BREAKDOWN

If at any time the Federal Government are satisfied that the arrangements indicated above have become unworkable and the administration of the province cannot be carried on satisfactorily in accordance therewith, they should have power to supersede these arrangements, take the administration into their own hands and make such other provision for conducting it as they may consider necessary.

V. REPRESENTATION IN THE FEDERAL LEGISLATURE

Each of these three minor provinces should be treated as a unit of the Federation for purposes of representation in the two Houses of the Federal legislature.

The above proposals vest powers in the Federal Government which are not similarly vested in the case of the major provinces. It is necessary that this deviation should be provided for in view of

- (a) the small size of both the area and the population in each of these minor provinces, and
- (b) the need that will continue to exist for several years for the Centre shouldering the ultimate responsibility for
 - (i) the provision of adequate finance to these areas for meeting current needs as well as for development, and
 - (ii) for counteracting, whenever necessary, in the field of administration the deleterious influence of parochialism and sectarianism so powerful in small areas and for ensuring an efficient standard of administration.

Delhi

In the case of Delhi Province, we should consider the question of whether :

- (a) Delhi City, both Old and New, should not be separated from the rest of the area and placed directly under the Federal Government, (if the capital of India is to continue in Delhi, it would seem necessary that this question should be faced and a decision taken); and
- (b) whether the rest of the area could not more conveniently be added to East Punjab which has become an unusually small province or the United Provinces or divided between both.

(IV) MINUTES OF MEETINGS OF THE COMMITTEE

August 21, 1947

Present : B. Pattabhi Sitaramayya, *Chairman*; C. M. Poonacha; Mukut Bihari Lal Bhargava; Deshbandhu Gupta; K. Santhanam; N. Gopalaswami Ayyangar.

Dr. B. Pattabhi Sitaramayya was elected Chairman of the committee.

The special committee made a brief survey of the constitutional position of the five Centrally Administered Areas, viz., Panth Piploda, Andaman and Nicobar Islands, Coorg, Ajmer-Merwara and Delhi, and took the following decisions :

(1) *Panth Piploda* : Considering the location of Panth Piploda composed of ten and a half villages, the committee recommended that it should form part of the province of Ajmer-Merwara.

(2) *Andaman and Nicobar Islands* : The Andaman and Nicobar Islands

should continue to be administered by the Government of India with such adjustments in the administrative machinery as may be deemed necessary.

(3) *Coorg, Ajmer-Merwara and Delhi* : Coorg, Ajmer-Merwara and Delhi should be designated as minor provinces.

With regard to the constitutional changes in these three Chief Commissioners' Provinces, the special committee wanted office to collect the necessary material, such as, latest administration reports, financial statements, memoranda on the financial stability of these provinces, and their present political set-up. The office was asked to supply copies of this material to the members of the special committee before the 25th of August, 1947.

September 1, 1947

Present : (1) B. Pattabhi Sitaramayya, *Chairman* ; (2) C. M. Poonacha ; (3) Mukut Bihari Lal Bhargava; (4) K. Santhanam; (5) Hussain Imam; (6) N. Gopalasawami Ayyangar; (7) Deshbandhu Gupta.

In attendance : Jugal Kishore Khanna, Deputy Secretary.

The committee made a detailed survey of the present political set-up and administration of the three Chief Commissioners' Provinces of Ajmer-Merwara, Coorg and Delhi, which may hereafter be known as minor provinces, and laid down the following as data on which the future constitution of these provinces was proposed to be based :

- (a) that the Centre must have a special responsibility for the good government and the financial solvency of these provinces,
- (b) that on account of the smallness of area and scantiness of resources there was a great need of pulling up the standard of administration in these minor provinces to the standard in major provinces,
- (c) that there was but restricted scope in regard to the complete working of a party government.

At the suggestion of Mr. N. Gopalaswami Ayyangar the committee considered the question whether, in the case of Delhi Province, Old and New Delhi should not be separated from the rest of the area and placed directly under the Federal Government and whether the rest of the area could not very conveniently be added to East Punjab which has become an unusually small province. The committee was also faced with the fact that the Government of India would very much like to have a separate area for the seat of the capital of the Federation. The committee ultimately decided to keep the province of Delhi intact and to give the Centre some special powers.

The committee then considered clause by clause the memorandum prepared by Mr. N. Gopalaswami Ayyangar and came to the following conclusions :

1. (i) that each of these minor provinces should have a legislature of its own.

(ii) the term of elections of the legislature, the franchise and other general provisions shall be on the lines adopted by the Constituent Assembly for the major provinces except that the representation of the different territorial constituencies in the legislature (a single House) shall be on a scale of not more than one representative for every 5,000 people subject to a maximum of 33 for Coorg, 15,000 subject to a maximum of 40 in the case of Ajmer-Merwara and 20,000 subject to a maximum of 50 in the case of Delhi.

2. Provincial legislature shall not have the power to make laws for Federal subjects and the subjects intended for both in the provincial and concurrent lists in the new Constitution, will be treated as concurrent in respect of these minor provinces. All laws made by the Federal legislature for these provinces in respect of all these subjects shall take precedence over laws passed by the provincial legislature. Thus all Federal laws will prevail in the concurrent list.

3. All laws passed by the provincial legislature on its own initiative shall be subject to the assent of the President of the Federation. The usual time limit of 6 weeks for assent as in the case of major provinces will apply.

EXECUTIVE

4. (i) For each of these minor provinces there shall be a Head corresponding to the Governor of a major province. He may be given the designation of a Lieutenant Governor. He shall be appointed by the President of the Federation and shall be responsible to him. He shall, however, act on the advice of his Ministers. In case of difference between him and his Ministers on any important issue the matter shall be referred to the President of the Federation for decision. He shall submit with his remarks to the President of the Federation all laws and the budget as passed by the provincial legislature, for assent.

(ii) The term of office and the grounds of removal in case of the Lieutenant Governor shall be the same as those given in the principles of the model provincial constitution adopted by the Constituent Assembly.

5. There shall be a Council of Ministers not exceeding three for each of these provinces. N. Gopalaswami Ayyangar suggested that they should be chosen in the same manner as Ministers in the major provinces subject to the proviso that the action of the Head of the province in choosing his Ministers should be subject to the control of the President of the Federation. He also suggested that the Ministers should be collectively responsible to the legislature. K. Santhanam favoured the adoption of South African model of executive. He also favoured irremovable executive in the case of these minor provinces.

The committee discussed at great length the system of Executive Government in the above mentioned schemes as also their implications. According to N. Gopalaswami Ayyangar's scheme there will be a responsible ministry subject to the proviso that when there is a difference between the Governor and his Ministers on any issue, the matter will be referred to the President of the Federation. The other scheme favoured by Santhanam was on the model of South African constitution in which the members of the Executive Council are to be elected by the legislature and would function as an irremovable executive for the full term of the legislature. In all matters of legislation the decision of the legislature will be final unless over-ruled by the President. In matters of administration, the executive consisting of the Lieutenant Governor and Ministers will conduct it subject to the control of the legislature.

Gopalaswami Ayyangar, Deshbandhu Gupta and Mukut Bihari Lal Bhargava favoured the first scheme while K. Santhanam, C. M. Poonacha and Hussain Imam favoured the second scheme.

Pattabhi Sitaramayya, the Chairman, favoured a fixed executive after the South African Provincial model.

JUDICIARY

6. (i) In the case of Coorg the powers of a High Court shall be exercised by the Madras High Court.

(ii) For Delhi and Ajmer-Merwara there shall be a High Court established in Delhi having original as well as appellate jurisdiction over both the provinces. The judges for this High Court shall be appointed as in the case of major provincial High Courts.

(iii) Rest of the judiciary in these three minor provinces will be appointed as in the case of major provinces.

PROVINCIAL SERVICES

7. (i) For higher appointments provision shall be made in the recruitment of All India Administrative Service, for meeting the requirements of these three provinces as well.

(ii) Provision shall be made for transfers *inter se* of service personnel recruited in the above manner in these three provinces.

September 30, 1947

Present : (1) B. Pattabhi Sitaramayya, *Chairman*; (2) K. Santhanam; (3) Deshbandhu Gupta; (4) C. M. Poonacha; (5) N. Gopalaswami Ayyangar.

In attendance : Jugal Kishore Khanna, Deputy Secretary.

C. M. Poonacha by a written request to the Chairman wanted the

committee to reconsider their previous decision relating to the nature of the executive in the minor provinces and further desired to record his vote in favour of N. Gopalaswami Ayyangar's scheme. Gopalaswami Ayyangar also pointed out the difficulties which may have to be confronted in adopting South African Provincial Model of irremovable executive.

The Chairman allowed the matter to be reconsidered and the committee unanimously agreed to adopt N. Gopalaswami Ayyangar's scheme to have a responsible Ministry subject to the proviso that when there is a difference of opinion between the Lieutenant Governor and his Ministers on any important issue, the matter will be referred to the President of the Federation for final decision.

Poonacha pressed for a special provision to enable Coorg to be amalgamated with any other major unit after the wishes of the two units have been ascertained. The committee was of the view that it was unnecessary to make any special provision in the Constitution for the minor provinces as a general comprehensive provision is proposed to be made in the Union Constitution in this behalf.

Consideration of the remaining clauses of N. Gopalaswami Ayyangar's draft was taken up. The following clauses were adopted.

ADMINISTRATIVE BREAKDOWN

If at any time the Federal Government is satisfied that the normal government according to the above provisions had become unworkable and the administration of the province could not be carried on satisfactorily in accordance therewith, they should have power to supersede these arrangements, take the administration into their own hands and make such other provision for conducting it as they may consider necessary. The exercise of this power will be subject to the usual provisions relating to report to and control by the Federal legislature.

REPRESENTATION IN THE FEDERAL LEGISLATURE

Notwithstanding the provision made in the Union Constitution regarding the basis of representation to the Federal Houses each of these three minor provinces should be treated as a unit of the Federation for purposes of representation in the two Houses of the Federal legislature.

K. Santhanam pointed out that in the case of Delhi Province the revenues of the proposed corporation for Delhi may amount to more than the income of the provincial Government and that there was bound to be some over-lapping of the functions of the corporation and the local Government. He, therefore, suggested that some scheme be evolved so that the functions of the corporation may be taken over by the province. The Chairman

pointed out the practical difficulties of any such scheme since the proposed corporation is itself yet to be formed.

The committee preferred to leave the matter for future consideration and legislation by the Government of India or that of Delhi as the case may be.

(V) REPORT OF THE COMMITTEE

October 21, 1947

To

The President,
Constituent Assembly of India,
New Delhi.

DEAR SIR,

We, the members of the committee appointed by you in accordance with the motion adopted by the Constituent Assembly on the 30th July, 1947, for the purpose of recommending constitutional changes in the five centrally administered areas, viz., Panth Piploda, Andaman and Nicobar Islands, Coorg, Ajmer-Merwara and Delhi, submit this our report and the annexure thereto. We have adopted broadly the principles of responsible government as the basis of the constitution for the three last mentioned provinces. We have, however, made some modifications in the provisions adopted by the Assembly in respect of the major provinces. Before formulating our proposals we fully considered the position of these provinces with respect to their geography, financial condition and the working of the existing system of government in these areas.

2. Panth Piploda is a small tract of territory consisting of only 10½ villages situated in Malwa in the Central India Agency. In view of its small size and isolated position we have recommended that it should form part of the province of Ajmer-Merwara. This step was also suggested by some influential citizens of Panth Piploda. As regards the group of islands in the Bay of Bengal known as the Andaman and Nicobar Islands which have ceased to be penal settlements, we recommend that they should continue to be administered by the Government of India as at present with such adjustments in their administrative machinery as may be deemed necessary.

3. Before recommending any constitutional changes for the three Chief Commissioners' Provinces of Coorg, Ajmer-Merwara and Delhi which we propose to designate as Lieutenant Governors' Provinces, we took into account the following considerations:

(a) that the Centre must have a special responsibility for the good government and the financial solvency of these provinces;

(b) that on account of the smallness of these areas and the scantiness of their resources, the need for central assistance will continue for

pulling up the standard of their administration to the level in the major provinces.

Among the important decisions taken by us are :

- (1) Each of these three provinces should henceforth function under a Lieutenant Governor to be appointed by the President of the Indian Federation.
- (2) Each of these three provinces should normally be administered by a Council of Ministers responsible to the legislature as in other provinces, but any difference on an important matter arising between the Lieutenant Governor and the Ministry should be referred to the President of the Federation for final decision.
- (3) Each of these provinces should have an elected legislature which should function like other provincial legislatures except that—
 - (a) the federal legislature will in the case of these provinces have concurrent power of legislation even in respect of the subjects included in the Provincial Legislative List;
 - (b) all laws passed by the provincial legislature shall require the assent of the President of the Federation;
 - (c) the budget of the province after being voted by the provincial legislature shall require the approval of the President of the Federation before it becomes operative.
4. We are fully alive to the circumstances which led to the formation of the Delhi Province in 1912. We also recognize the special importance of Delhi as the capital of the Federation. We are, however, of the opinion that the people of the province which contains the metropolis of India should not be deprived of the right of self-government enjoyed by the rest of their countrymen living in the smallest of villages. We have, accordingly, placed the Delhi Province on a par with Ajmer-Merwara and Coorg and have recommended responsible Government subject to the limitations already indicated. Our detailed recommendations are given in the annexure.

Yours sincerely,

B. PATTABHI SITARAMAYYA (*Chairman*),
 N. GOPALASWAMI AYYANGAR,
 DESHBANDHU GUPTA,
 K. SANTHANAM,
 C. M. POONACHA,
 MUKUT BIHARI LAL BHARGAVA,
Members of the Committee.

ANNEXURE

LIEUTENANT GOVERNORS' PROVINCES

1. Delhi, Ajmer-Merwara including Panth Piploda, Coorg and such other provinces as may be so designated shall be Lieutenant Governors' Provinces.

THE PROVINCIAL EXECUTIVE

2. In each province there shall be a Lieutenant Governor who shall be appointed by the President of the Federation.

3. The provisions of the Constitution Act relating to the term of office, qualifications for appointment, eligibility for re-appointment, conditions of office, declaration before entering office by the Governor shall as far as possible be applicable in the case of the Lieutenant Governor. He may be removed from office by the President on grounds upon which a Governor may be impeached.

4. (i) The executive authority of the province shall be vested in the Lieutenant Governor and may be exercised by him either directly or through persons acting under his authority.

(ii) The power to suspend, remit or to commute the sentence of any person convicted of any offence shall be vested in the Lieutenant Governor as in the case of major provinces.

(iii) Nothing in this section shall prevent the President of the Federation or the provincial legislature from delegating functions to subordinate authorities.

ADMINISTRATION OF PROVINCIAL AFFAIRS

5. (i) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Lieutenant Governor in the exercise of his functions except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. The number of Ministers shall not exceed three except with the approval of the President of the Federation.

(ii) In case of difference of opinion between the Lieutenant Governor and his Ministers on any issue which he considers important he may refer the matter to the President of the Federation, whose decision shall be final and binding upon the province.

6. The provisions of the Constitution Act relating to the appointment, dismissal and with respect to the determination of the salaries of the Ministers in the Governors' provinces shall, as far as possible, be applicable in the case of Lieutenant Governors' provinces.

LEGISLATURE

7. There shall for each of the Lieutenant Governor's province be a legislature, consisting of a single chamber to be known as the Legislative Assembly. It shall be composed of members chosen by direct election.

8. The term of office of the elected members of the Assembly, the basis of franchise and other general provisions shall be on the lines as provided in the Constitution Act for Governors' provinces except that the representation of the different territorial constituencies in the Assembly shall be on a scale of not more than one representative for every 5,000 persons subject to a maximum of 33 for Coorg, 15,000 subject to a maximum of 40 in the case of Ajmer-Merwara including Panth Piploda and 20,000 subject to a maximum of 50 in the case of Delhi.

9. The provincial Assembly shall not have the power to make laws for Federal subjects; and the subjects included in both the provincial and concurrent lists in the new Constitution, will be treated as concurrent in respect of these minor provinces. Laws made by the Federal legislature for these provinces in respect of any of these subjects shall prevail over laws passed by the provincial Assembly in so far as the latter are inconsistent with the Federal laws.

10. Laws passed by the provincial Assembly shall require the assent of the President of the Federation.

11. The provisions of the Constitution Act relating to prorogation and dissolution of the legislature, the right of the Governor to address and send messages, election of members as officers of the legislature and fixation of their salaries in Governors' provinces shall apply *mutatis mutandis* in the case of Lieutenant Governors' provinces.

12. The provisions of the Constitution Act relating to the making of declaration by members, vacation of seats, disqualification of members, their privileges and immunities, salaries and allowances, in the provincial legislatures shall as far as possible be applicable in the Lieutenant Governors' provinces.

13. The provisions of the Constitution Act relating to language to be used in the provincial legislature shall as far as possible be applicable in the case of these provinces.

ADMINISTRATIVE BREAKDOWN

14. If at any time the President of the Federation is satisfied that the government of the province cannot be carried on in accordance with these provisions, he should have power to supersede these arrangements, take the administration into his own hands and make such other provision for conducting it as he may consider necessary. The exercise of this power will be subject to the usual provisions relating to report to and control by the Federal legislature in the case of emergencies in a Governor's province.

JUDICIARY

15. (i) In the case of Coorg, the powers of a High Court shall be exercised by the Madras High Court.

(ii) For Delhi and Ajmer-Merwara there shall be a High Court established in Delhi having original as well as appellate jurisdiction over both the provinces. The constitution of this High Court, the appointment of judges and their salaries, its jurisdiction and administrative functions shall be governed by the provisions of the Constitution Act applicable to the High Courts.

PROVINCIAL SERVICES

16. (i) For higher appointments provision shall be made in the recruitment of All India Administrative Services for meeting the requirements of these three provinces.

(ii) Provision shall be made for transfers *inter se* of service personnel recruited in the above manner in these three provinces.

REPRESENTATION IN THE FEDERAL LEGISLATURE

17. Notwithstanding anything to the contrary in the Union Constitution regarding the basis of representation for the Houses of Federal legislature, each of these three minor provinces should be treated as a unit of the Federation for purposes of representation in the two Houses of a Federal legislature.

CHIEF COMMISSIONERS' PROVINCES

18. (i) The Andaman and Nicobar Islands and such other areas as may be so designated shall be the Chief Commissioners' provinces.

(ii) The Andaman and Nicobar Islands shall continue to be administered as at present with such adjustments in the administrative machinery as may be deemed necessary.

ADDITIONAL NOTE BY MUKUT BIHARI LAL BHARGAVA AND C. M. POONACHA, TO THE CHIEF COMMISSIONERS' PROVINCES CONSTITUTION COMMITTEE REPORT

We, the members representing Ajmer-Merwara and Coorg having signed the report find it necessary to append this additional note regarding the future of these two provinces.

The special problems arising out of the smallness of area, geographical position, scantiness of resources attended with what may be called administrative difficulties of many a complex nature may, at no distant future, necessitate the joining of each of these areas with a contiguous unit. Therefore, we feel that a specific provision should be made in this chapter of the Constitution to make possible such a union after ascertaining the wishes of the people of these areas. No doubt, our attention was drawn to clause 3 of the Union Constitution Committee Report, which is yet to be adopted by the Constituent Assembly, wherein certain provisions relating to the creation of a province, altering the boundaries of a province, etc., are embodied. But after careful examination we feel that the proposed clause 3 of the Union Constitution Committee Report is of a very restrictive nature and does not in specific terms contemplate the inclusion of an Indian province or areas with a State or group of States. Taking into account the situation of Ajmer-Merwara which is surrounded on all sides by Rajputana States such a clause would perpetually leave Ajmer-Merwara in isolation even though the people of Ajmer-Merwara may at any time decide against it. Accordingly we press upon the Constituent Assembly the urgency of incorporating a suitable provision in this chapter of the Constitution so as to make it possible for each of these areas to join a contiguous unit.

PART THREE

EXPERT COMMITTEE ON FINANCIAL PROVISIONS
September-December 1947

EXPERT COMMITTEE ON THE FINANCIAL PROVISIONS

September-December 1947

[In a note prepared for discussion with the Finance Department on September 4, 1947, N. Gopalaswami Ayyangar suggested inter alia the appointment of an Expert Committee to study the financial provisions of the Constitution. Some discussions took place with the Finance Department. Eventually N. R. Sarkar (formerly member of the Governor-General's Executive Council and a well-known industrialist and financial expert), V. S. Sundaram (member of the Indian Audit and Accounts Service) and M. V. Rangachari (then Budget Officer of the Government of India) were appointed members of this Expert Committee. The committee began its work on November 17 and submitted its report to the President of the Assembly on December 5. The report was placed on the table of the Assembly by Ambedkar on November 4, 1948. The text of Gopalaswami Ayyangar's note, a record of discussions with the Finance Department and the Report of the Expert Committee are reproduced below.]

(I) A NOTE BY N. GOPALASWAMI AYYANGAR ON THE POINTS FOR DISCUSSION WITH THE FINANCE DEPARTMENT September 4, 1947

I

1. ATTACHMENT OF A selected officer of the Finance Department to Constituent Assembly Secretariat for about two months until provisions in the Constitution relating to finances are finally settled and embodied.

2. Memorandum by Finance Department on present provisions in Government of India Act of 1935 and Niemeyer award and their working since 1937, also to embody any suggestions by department for modification, either as to allocation of sources of revenue or as to distribution of proceeds of Federal taxation.

3. Memorandum from each province regarding the working of present arrangements between Centre and provinces and suggestions for modifications, if any.

4. Memorandum from each State, which will get individual representation

in the House of the People, giving information as to the taxes in the Federal list levied by the State, the rates at which they are levied and the revenue derived from them since 1937 and making suggestions for any modifications in the provisions of the Government of India Act, either as to allocation to particular sources of revenue to the Federation or as to appropriation of the whole or a part of such revenues to the State.

5. Appointment of an expert committee of three persons, including one with special knowledge of the finances of a number of States, for examining with the aid of these memoranda the present provisions of the Government of India Act and their working during last ten years and making recommendations as to the list and sections to be embodied in the new Constitution.

6. The memoranda to be obtained before the 20th of September on which date the expert committee should commence its examination. The report of the expert committee should be made not later than 28th September.

7. The report of the expert committee to be considered by the Union Constitution Committee when it is convened in the first week of October. The recommendations of the Union Constitution Committee to be sent on to the Drafting Committee by the 5th October.

II

The following points to be kept in view or examined :

- (a) The allocation of taxes as between Centre and the units as regards legislation, levy and collection.
- (b) Federal taxes to be divided into three categories :
 - (i) those whose net proceeds are to be retained entirely by Centre,
 - (ii) those whose net proceeds are to be entirely made over to units,
 - (iii) those whose net proceeds are to be shared between Centre and units.
- (c) Principles of sharing.
- (d) Machinery for determining shares, such as,
 - (i) A Financial Commission to be appointed immediately after the enactment of the Constitution to report on these principles and their application, to be brought into effect when the Constitution comes into force.
 - (ii) The same or a similar commission to review these principles and their concrete application periodically, say once in five years.

III

Federal grants to units. History during last ten years. Principles to guide such grants in the future. Machinery for the determination of such grants, whether it might be the same Financial Commission as referred to in II(d)(ii) or a different one.

IV

The fitting of the Indian States into the general system, as far as possible on the same terms as provinces.

Should a time lag be provided for their so fitting in?

Should their existing rights to Federal taxes now levied by them be acquired on payment of compensation?

A review of the important agreements that exist now between the Centre and important Indian States as regards maritime customs, excise, etc.

Feasibility on the centralization of all customs levied at the Federal frontiers or permitting Indian States affected to retain such portion of the customs so levied at their frontiers as might be attributed to consumption in the State etc.

V

Income-tax : Some provinces have claimed a larger percentage to be made over to them than under the existing system.

VI

Excises : Suggestion has been made that the policy of Government of India Act of 1935 might be reversed, the Centre being allocated only the excises of specified commodities, the rest of the field of excise being left to provinces to tap according to their needs. Would this be possible without any material detriment to revenues?

VII

The residuary powers are vested in the Centre in the new Constitution so far as the provinces are concerned and in the States so far as the States are concerned. In view of this, is it necessary that any additional specific taxes should be entered in the Provincial List, if so what?

VIII

The committee should indicate clearly which of its recommendations should go into the body of the Constitution and which could be provided for by Federal law.

IX

The committee might also examine the provisions regarding procedure in financial matters, sections 33 to 37 and 78 to 83 of the Government of India Act of 1935, and state whether it has any recommendations to make as regards any modifications to these provisions.

X

A large number of Indian States derive substantial revenues from land customs levied at the frontiers between their limits and those of

neighbouring States or provinces. One of the fundamental rights already agreed upon by the Constituent Assembly is to remove all internal barriers to trade between unit and unit. The committee might examine and make recommendations as to whether these land customs could be done away with at once or over a period of years, and if so whether any prejudice caused to the finances of particular States should be compensated, if so, in what manner.

(II) A RECORD OF DISCUSSION HELD ON THE FINANCIAL PROVISIONS
IN THE DRAFT CONSTITUTION
September 4, 1947

Present : (1) President, Constituent Assembly, (2) The Finance Minister, (3) N. Gopalaswami Ayyangar, (4) Principal Secretary, Ministry of Finance, (5) Deputy Secretary (Budget), Ministry of Finance, and (6) Private Secretary to the Finance Minister.

The discussion was held on the basis of a note prepared by N. Gopalaswami Ayyangar. He explained that the intention was to make general provision in the Constitution leaving the details thereof to be worked out by an expert commission consisting of three members who had considerable experience of the Central, Provincial and the States' finances. He suggested that Finance Ministry could help by drafting memoranda on the various points mentioned in the note referred to above. He stressed the necessity of this work being completed in accordance with the time table indicated by him. He agreed to the suggestion that the expert committee should be constituted straightaway.

On an inquiry by the Minister of Finance it was stated that the Central Government was assuming financial responsibility for Defence, Foreign Affairs and Communications on behalf of the States under arrangements for accession to the Dominion. The financial arrangements for acceding to the new Constitution have to be worked out.

The Finance Minister stated that he would like to clear up some general principles before memoranda were drafted. He was for keeping more powers for the Centre. Provincial suspicion of the Centre which was the result of political conditions should now be given up. He was of the opinion that it was not necessary to have rigid fields of provincial and central taxation. Provision should be made in the Constitution for the creation of an Interstatal Commission to decide not merely the allocation of the proceeds of the taxes as between the various units of the Centre but also in respect of legislation and collection of taxes. In reply to N. Gopalaswami Ayyangar, he explained that by legislation he meant the right to levy a particular tax.

The Principal Secretary, Finance Department, pointed out that even under present arrangements there was no bar to the proceeds of certain taxes

being shared by the Centre with the provinces. There was also the provision that in respect of certain taxes the Centre was merely a collecting agency while the net proceeds were allocable to the provinces. He favoured the idea of defining the field of provincial taxation, otherwise there would be endless troubles between the provinces and the Centre.

N. Gopalaswami Ayyangar stated that a strong Centre was being contemplated but provinces should not be made to depend wholly on the Centre for their finances.

The Finance Minister said that if the provincial field is demarcated, there is likelihood of the provinces giving up their own sources of revenue and asking the Centre to subsidise them. He favoured elasticity in the financial provisions to be incorporated in the new Constitution. In this connection, he pointed out that the present financial resources were likely to decrease especially in the field of customs and income-tax. The result of a large scale drive in production would be a serious decline in customs receipts and the policy of progressive nationalization was bound to affect greatly the income-tax receipts.

The President, Constituent Assembly, said that speaking from the experience of Bihar he would say that the provincial sources of revenue were also decreasing. For example, the provincial governments were committed to the abolition of *zamindari* which meant large scale expenditure. They were committed to the abolition of excise on liquor. The revenue from stamps will also decrease as litigation will diminish with the abolition of *zamindari*.

The Minister of Finance suggested that there could be a clear provision in the Constitution that the State had the right to levy income-tax and excise tax on State enterprises or that these enterprises must make a contribution to the general revenues equivalent to the income-tax that they would ordinarily have paid had they been subject to income-tax etc. This was a necessary consequence of a policy of progressive nationalization. For psychological reasons such powers were essential as the dual criticism from the public and labour had to be met which for instance in the case of railways was that contribution to general revenues meant a tax on transport and the deprivation of labour of its legitimate share.

The President, Constituent Assembly, agreed that such a provision should be added to the Constitution.

The names of the persons suitable for the Expert Committee were then discussed. The following list was tentatively suggested: (1) Mr. V. S. Sundaram; (2) Mr. G. L. Mehta; (3) Mr. M. V. Rangachari.

It was also tentatively suggested that Mr. K. Sanjiwa Row should be appointed as adviser for two months in the Secretariat of the Constituent Assembly. The Minister of Finance explained that the strength of the Ministry of Finance had been severely curtailed and it was with considerable difficulty that he might be able to release Finance Department personnel.

(III) REPORT OF THE EXPERT COMMITTEE
December 5, 1947

To

The Secretary,
Constituent Assembly of India,
Council House,
New Delhi.

Expert Committee on Financial Provisions

SIR,

I have the honour to forward herewith the Report of the Expert Committee on Financial Provisions of the Union Constitution for submission to the Hon'ble the President.

I have etc.
M. V. RANGACHARI,
Member-Secretary.

TERMS OF REFERENCE

We were appointed by the President of the Constituent Assembly to examine and report on the Financial Provisions of the Constitution Act with the following terms of reference :

I. To examine, with the aid of the memoranda on the distribution of revenue between the Centre and the provinces sent by the Government of India and the provinces, the existing provisions relating to finance and borrowing powers in the Government of India Act, 1935, and their working during the last ten years and to make recommendations as to the entries in the lists and sections to be embodied in the new Constitution.

The following points shall, in particular, be kept in view in making the recommendations :

- (a) How are taxes to be allocated between the Centre and the units as regards legislation, levy and collection?
- (b) Which are the Federal taxes—
 - (i) whose net proceeds are to be retained entirely by the Centre ;
 - (ii) whose net proceeds are to be entirely made over to units ;
 - (iii) whose net proceeds are to be shared between the Centre and the units?
- (c) On what principles are the taxes mentioned in (b) (iii) to be shared between the Centre and the units?
- (d) What is to be the machinery for determining the shares: e.g., whether a Financial Commission should be appointed immediately after the enactment of the Constitution to report on the principles

of sharing and their application to be brought into effect when the Constitution comes into force; and whether the same or a similar Commission should review these principles and their concrete application periodically, say, once in five years?

II. What should be the principles on which Federal grants should be made to the units in future? What should be the machinery for the determination of such grants: could the same Financial Commission as is referred to in I(d) above act as the machinery for this purpose also, or should it be a different one?

III. How could the Indian States be fitted into this general system as far as possible on the same terms as provinces? Should a time lag be provided for their being so fitted in?

IV. On the assumption of financial responsibility for Defence, Foreign Affairs and Communications on behalf of the Indian States under arrangements for accession to the Federation, what special financial arrangements, if any, are necessary between the acceding States and the Federation.

V. Should the existing rights of the Indian States as to Federal taxes now levied by them be acquired on payment of compensation?

VI. How far is it feasible, on the centralization of all customs levied at the Federal frontiers, to permit Indian States affected by such centralization to retain such portion of the customs so levied at their frontiers as might be attributed to consumption in the States, etc.? [A review of the existing agreements between the Centre and certain important Indian States as regards maritime customs, excises etc. may be of value in this connection.]

VII. Some provinces have claimed a larger percentage of the income-tax to be made over to them than under the existing system. Does this claim merit consideration; if so, to what extent?

VIII. A suggestion has been made that the Centre should be allocated only the excises on specified commodities, the rest of the field of excises being left to the provinces to tap according to their needs. Would this be possible without any material detriment to Federal revenue?

IX. On the basis that the residuary powers are vested in the Centre in the new Constitution so far as the provinces are concerned, and in the States so far as the States are concerned, is it necessary that any additional specific taxes should be entered in the Provincial List, and if so, what?

X. Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters contained in sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?

XI. A large number of Indian States at present derive substantial revenues from land customs levied at the frontiers between their limits and those of neighbouring States or provinces. One of the fundamental rights already adopted by the Constituent Assembly is to remove all internal barriers in regard to trade between unit and unit. Could these land customs be done away with either immediately or over a period of years, and if

so, should any prejudice caused thereby to the finances of particular States be compensated and in what manner?

[The committee should kindly indicate clearly which of its recommendations should go into the body of the Constitution and which should be provided for by Federal law.]

PREFATORY REMARKS

2. We began our work on the 17th November and have been sitting continuously. We have received memoranda from the various Provincial Governments setting out their claims for larger resources as well as their points of view in connection therewith. We have also received a memorandum from the Ministry of Finance of the Central Government giving a picture of the financial position of the Centre in the near future. The Secretariat of the Constituent Assembly has collected for us information on various matters relating to the States, and also helpful information regarding other Federations. It has also prepared a draft of the sections which come within our terms of reference; and this has considerably helped us in our work. We are indebted for all these memoranda, information and drafts. We are also indebted to some of the provincial authorities who appeared before us in person and discussed with us informally the questions arising out of the memoranda presented by their Governments. We availed ourselves also of the specialized knowledge and experience of not only some of the officials of the Central Secretariat, but of some members of the Constituent Assembly and others who have unique knowledge of some of the problems under our consideration. All our discussions, however, were free and informal; and we did not, therefore, record any evidence, apart from the memoranda placed before us.

3. In particular, the other two of us would like to place on record our grateful appreciation of the assistance we have received from our colleague and Secretary Mr. Rangachari, who amidst his exacting, multifarious duties, including the preparation of the interim budget, not only found time regularly to attend our meetings, but also placed his wide knowledge and experience at our disposal, and arranged to secure at short notice most of the available information required by us. We should also like to thank Mr. B. Das Gupta of the West Bengal Government Secretariat for the intelligent and extremely well informed assistance he gave us. We are also indebted to Mr. Mukerjee, Joint Secretary of the Constituent Assembly, for his help throughout our sittings and in particular for putting our recommendations in the shape of draft amendments to the Constitution.

4. Our terms of reference may be divided broadly into the four following groups:

- (1) Relations between the Centre and the units, and between the units *inter se*;

- (2) Financial procedure, *i.e.*, relating to the budget, expenditure and Money Bills;
- (3) Borrowing powers of units; and
- (4) Relations of the Union with the States.

We have accordingly, for convenience, regrouped our terms of reference as follows:

- (1) I, VII, VIII, IX, II
- (2) X
- (3) I
- (4) III, IV, V, VI, XI

and discussed them, as far as possible, in the above order.

BRIEF HISTORY OF FINANCIAL RELATIONS

5. Before dealing with the working of the financial arrangements in the Government of India Act, 1935, it is necessary to give a brief account of the earlier arrangements so that we can have a correct picture of the problems before us.

6. The period before the passing of the Government of India Act, 1935, falls into two well-defined parts, namely, the period ending with the 31st March, 1921, *i.e.*, before the operation of the Government of India Act, 1919, and the period covered by that Act.

7. The process of financial development in this country has been one of evolution from a unitary to a quasi-federal type. The Government of India started as a completely unitary Government in entire control of the revenues of the country with the Provincial Governments depending on the Central Government for all their requirements. In the earlier years, Provincial Governments were given fixed grants for meeting the expenditure on specific services, and the first step in making specific sources available to them was taken when the Provincial Governments were given the whole or part of certain heads of revenue like Forest, Excise, Licence Fees (later to develop into Income-tax), Stamps, Registration, Provincial Rates, Law and Justice, Public Works, Education, etc. The funds released by this allocation were not adequate for the requirements of the provinces and had to be supplemented, mainly by sharing with them in varying proportions the main source of Central revenue, namely; Land Revenue, and partly by making to them additional cash assignments. In 1904, the settlements with the provinces were made quasi-permanent, thereby making the provinces less dependent on the fluctuating grants from the Centre. This method of financing the provinces was examined more than once and retained as the best suited to the then circumstances.

8. The Government of India Act, 1919, which, among other things, aimed at giving a reasonable measure of autonomy to the provinces as the first step in the process of self-government, made the first clear-cut allocation

of resources between the Centre and the provinces without having any divided heads between them. Under this Act, certain specific heads were given wholly to the provinces and the remaining sources were retained by the Centre. Thus among the principal heads of revenue, Land Revenue, Excise and Stamps were given to the provinces, while the Centre retained Customs, Income-tax, Salt and Opium. Of the three great commercial departments of Government, Railways and Posts and Telegraphs were retained by the Centre, while Irrigation was handed over to the provinces.

9. This allocation of resources between the Centre and the units, particularly the assignment of the whole of Land Revenue to the provinces, left the Central budget in a substantial deficit; and in the earlier years of this scheme, the Centre had to depend on the provinces for contributions for balancing its budget. These contributions were fixed by what is commonly known as the Meston Award, and were designed to produce for the Centre an estimated shortfall of Rs. 9.8 crores (ninety-eight millions) resulting from the arrangements of resources between the Centre and the provinces. The contributions ranged from Rs. 348 lakhs (34.8 millions) from Madras to Rs. 15 lakhs (1.5 millions) from Assam, while one province, namely, Bihar and Orissa, had to make no contribution at all. It is unnecessary for the present purpose to describe in detail the method by which these contributions were fixed. It is enough to mention that they became a source of constant friction between the Centre and the provinces; and when substantial provincial deficits occurred, an unceasing clamour developed for their withdrawal. Between 1925 and 1928 these contributions were partially remitted and they were completely extinguished in 1929.

10. The experience of the years under the 1919 Act clearly showed that the sources of revenue allocated to the provinces were inelastic, and were insufficient to meet the increasing requirements of the provinces for their expanding needs for nation-building services such as Education, Medical Relief, Public Health etc., which fell almost wholly in the provincial field. It was clear that some additional revenue heads had to be released to the provinces; and while the Government of India Act, 1935, did not make any radical change in the allocation of heads between the Centre and the units, it revived in a somewhat modified form the earlier principle of dividing the proceeds of certain Central heads, the two heads concerned being Customs and Taxes on Income. The Act also provided for the grant of fixed subventions to some of the smaller provinces, and gave the Centre power to raise excise and export duties for distribution among the provinces and federating States. After an enquiry into the relative needs of the Centre and the provinces by Sir Otto Niemeyer, the provincial shares in the divided heads of Central revenue and the subventions to some of the provinces were fixed by an Order-in-Council, which, subject to a modification during the war, continued till 15th August, 1947.

PRESENT CONSTITUTIONAL POSITION

11. Under the Government of India Act, 1935, which is the starting point of our enquiry, the taxing jurisdictions of the Central and Provincial Legislatures are entirely separate. But, while the provinces retain the whole of the net proceeds of all taxes levied by them, the Central Government has to give away either in part or in whole the net proceeds of some of the taxes levied by it.

12. The taxes, the net proceeds of which are to be given away wholly to the provinces, if levied, are—

- (1) Federal Estate and Succession duties,
- (2) Federal Stamp duties,
- (3) Terminal taxes on goods and passengers carried by Railway or Air,
- (4) Taxes on Railway fares and freights.

The Centre can levy a surcharge on those taxes entirely for its own purpose. None of these taxes has in fact been levied, except that the Federal Stamp duties continue to be levied under the old laws, the duties however, being collected and retained by the provinces.

13. The Federal taxes, the net proceeds of which are to be shared with the provinces, fall into two groups:

- (1) taxes, the sharing of the net proceeds of which has been made obligatory by the Constitution viz., income-tax and jute export duty ;
- (2) taxes, the sharing of the net proceeds of which has been left to be determined by the Federal Legislature viz., Central Excises including duty on salt, and export duties except on jute and jute products. The Central Legislature has levied certain taxes under these heads, but has not provided for giving any share to the provinces.

14. Besides providing for giving away the net proceeds of taxes in whole or in part to the provinces, the Constitution also provides for fixed grants-in-aid to some provinces.

15. There is also a general provision for giving grants to provinces at the discretion of the Central Government either for general or specific purposes.

16. Two tables showing the constitutional position in respect of the revenues of the Federal and Provincial Governments respectively under the Government of India Act, 1935, will be found in Appendix I. We are indebted to Mr. Ayyangar's commentary on the Government of India Act, 1935, for these tables.

REVIEW OF FINANCES OF PROVINCES AND THE CENTRE

17. Two tables giving the financial position of the provinces and the Centre during the years 1937-38 to 1946-47 are set out in Appendix II.

In considering the working of the existing arrangements during the last decade, the most important point to note is that war broke out soon after the Government of India Act, 1935, came into operation.

18. During the war, all provinces except Bengal and Assam had surplus budgets. Revenue receipts increased several times, mainly on account of war-time conditions and also because the provinces levied a number of new taxes and increased the rates of existing ones; there were remarkable increases in receipts under Provincial, *i.e.*, liquor and drugs, excises, and in the provincial share of income-tax. Most provinces were under section 93 administration. All development work was stopped. The provinces are now faced with a heavy programme of expenditure without any corresponding increase in revenue. On the contrary, even apart from voluntary abandonment of revenue as in the case of liquor excises, the revenue is likely to go down much below wartime levels. Land revenue, both in the permanently and temporarily settled provinces, is not likely to expand. State purchase of zamindaries will not bring any return for years to come. In ryotwari provinces, remissions are likely to be more liberal than before, and there is thus little prospect of an increase in land revenue. Receipts from stamps and registration fees are not likely to increase much, while forest revenue will perhaps dwindle on account of large scale felling during the war. Receipts from sales tax, electricity tax and entertainment tax may not fall, though they will be below the war-time peak for some time to come.

19. During the war and after, most of the Provincial Governments have practically exhausted the entire field of taxation reserved for them. Moreover, Provincial Governments have to share the provincial field with local bodies, and on that account too, need adequate resources. A substantial transfer of revenues from the Centre to the provinces, therefore, seems inevitable, if essential and overdue programmes of social service and economic development have to be undertaken.

20. At this stage, we would refer to the adoption, by most Provincial Governments, of a prohibitionist policy; and of the inevitable loss of substantial revenue by all of them. Obviously, it is for the provinces to find alternative provincial resources from which to recoup the loss; and in any case, it would not be practicable for provinces to expect sufficient assistance from the Centre for this purpose, at any rate for many years. The point that we wish to emphasize is that it will be for the Provincial Governments to balance the urgency of schemes of development against the advisability of social reforms like prohibition, and that in any case, they must not embark on schemes, whether of reform or development, depending merely on the possibility of obtaining assistance automatically from the Centre.

21. To turn now to the Centre, it has been working on deficit budgets. The large surpluses that were expected some time ago have not been, and

are not likely to be, realized, mainly because of the food shortage, the refugee problem and other causes arising out of the partition of the country, particularly continued heavy expenditure on Defence. These are, however, temporary problems, and we consider that the financial position of the Centre is essentially sound. As these temporary problems are solved, the budgetary position of the Centre will necessarily get better. There is scope for improvement in the administration of Central taxes, and particularly of taxes on income. In respect of taxes on income, it should be possible for the Centre not only to collect more in future in the ordinary course every year but secure for the exchequer, by legislative changes, if necessary, the large sums that are believed to have been successfully kept back from the Government in recent years. We do not, however, expect any appreciable change under Customs and Excise; and we do not expect Railway contributions on anything like the scale during the war. Even after the temporary problems referred to above have been solved, expenditure on Defence and Foreign Affairs would still be substantial. The Defence Services will probably be reorganized and reequipped, and it is not possible to foresee what would be the scale of expenditure for properly equipped defence services even on a peace-time basis. There is little prospect on the other hand of reduction in the service of the national debt but there is, however, scope for reduction in the existing civil expenditure.

22. The problem before us is how to transfer from the Centre to the provinces sufficient amount which, while not placing too great a strain on the Centre, would provide adequate resources for the inauguration of useful schemes of welfare and development by the provinces. While the Centre, on its present basis, may not be in a position to part with substantial sums, we feel that with the resolution of its temporary difficulties and improvement in its tax administration, together with the levy and collection of taxes evaded in the past, it can with no serious risk to its own budget part with sizable sums every year. We are suggesting later in detail how these sums should be regulated. We have already referred to the need for provinces having clear priorities as between contending demands for money, and we have no doubt that the provinces will in the earlier years utilize the additional resources now placed at their disposal by concentrating on schemes that would add to the productive capacity of the country and consequently the income of the people and thus enable the provinces to embark on further schemes of reform and development.

CLAIMS OF PROVINCES

23. Every province has drawn pointed attention to the urgency of its programmes of social service and economic development and to the limited nature of its own resources, both existing and potential, and all of them have asked for substantial transfer of revenues from the Central sources.

A summary of the detailed suggestions made by them, which vary considerably, is set out in Appendix III.

24. On the question of apportionment of income-tax among provinces also the provinces differ widely in their views. Bombay and West Bengal support the basis of collection or residence, the United Provinces that of population, and Bihar a combined basis of population and origin (place of accrual); Orissa and Assam want weightage for backwardness. East Punjab, while suggesting no basis, wants her deficit of Rs. 3 crores somehow to be met.

25. In the case of excise taxes, the bases suggested are production, collection, consumption and population, while Assam suggests some weightage for its low level of revenue and expenditure. Assam has further pressed for special treatment of excise collected on wasting assets, *e.g.*, the petroleum raised in Assam. Assam also wants a share of the export duty on tea.

GENERAL OBSERVATIONS

26. Before we proceed further we would make a few general observations. India has a federal form of government, and every federation is based on a division of authority and involves a certain amount of compromise. In this country, federation has been the result of gradual devolution of authority. It has not come into existence through agreements among sovereign States as in some other federations.

27. What we have to do is to distribute the total available resources among Federal and Provincial Governments in adequate relation to the functions imposed on each; so, however, that the arrangements are not only equitable in themselves and in the interests of the country as a whole but are also administratively feasible. We have also to ensure that there is not too violent a departure from the *status quo*, and also to see that while we have as much uniformity as possible, weak units are helped at least to maintain certain minimum standards of services.

28. The basic functions of a Federal Government are Defence, Foreign Affairs and the service of the bulk of the national debt, and they are all expensive functions, particularly in the light of the limited resources of the country. The head "Communications" would ordinarily at least pay for itself. The Federal Government may also have to assume leadership in the coordination and development of research and higher technical education. Normally, however, apart from war or large-scale internal disorder, the expenditure of the Centre should be comparatively stable. The needs of the provinces are in contrast almost unlimited, particularly in relation to welfare services and general development. If these services, on which the improvement of human well-being and increase of the country's productive capacity so much depend, are to be properly planned and executed, it is

necessary to place at the disposal of Provincial Governments adequate resources of their own, without their having to depend on the variable munificence or affluence of the Centre. The provinces must, therefore, have as many independent sources of revenue as possible. On the other hand, it is not practicable to augment their revenues to any considerable extent by adding more subjects to the Provincial Legislative List, without simultaneously upsetting the equilibrium of the Centre. We cannot, therefore, avoid divided heads; and what we have to aim at is to have only a few divided heads, well balanced and high-yielding, and to arrange that the shares of the Centre and the provinces in these heads are adjusted automatically without friction or mutual interference.

29. In this country the lack of sufficient economic and financial statistics and other similar data is a great handicap. Therefore, the allocation of resources has to be made largely on the basis of a broad judgment, at any rate until the necessary data become available. We attach great importance to the collection of these statistics and to connected research, and trust that the Government will make the necessary arrangements without delay. In the meantime we have made our recommendations on the best judgment we could give to the exiguous data available.

LISTS OF TAXES FOR CENTRE AND THE UNITS

30. We recommend no major change in the list of taxes in the Federal Legislative List as recommended by the Union Powers Committee. We, however, recommend the substitution of the limit of Rs. 250 for Rs. 50 in clause 200 of the Draft Constitution relating to taxes on professions, trades, callings and employments. We observe from the Draft Constitution that it has been proposed to transfer to the Federal Legislative List stamp duty on transfer of shares and debentures, but we presume that the duties will continue to accrue to the provinces. In view of the far-reaching effects on public credit and finance of stock exchange transactions, we consider that the Centre should have the power to legislate for the regulation of such transactions. If such regulation involves the levy of taxes, we recommend that such taxes should be retained by the Centre except that if the taxes take the form of mere duties on transfers of shares and debentures, the provinces should have these duties just like other stamp duties. We accordingly recommend the entry in the Federal Legislative List of a new item "Stock exchanges and futures markets and taxes other than Stamp duties on transactions in them".

31. In the list of taxes in the Provincial Legislative List, we recommend the following changes:

- (1) In entry 43, the words "hearths and windows" may be deleted. Such taxes are not likely to be levied. In any case, they would be covered by the word "buildings".

- (2) In entry 53, the word "cesses" should, we think, be *replaced* by the word "taxes".
- (3) Similarly, in entry 56, we would *substitute* the word "taxes" for the word "dues".
- (4) In entry 50, we would make the following changes :
 - (a) for the word "sale", we would *substitute* "sale, turnover or purchase", in order to avoid doubt.
 - (b) We would also *add* words such as "including taxes in lieu thereof on the use or consumption within the province, of goods liable to taxes by the province on sale, turnover or purchase". This addition is suggested in order to prevent avoidance by importing for personal use from outside the province.
32. One of the provincial memoranda has suggested that the entry "State Lotteries" should be transferred to the Provincial List, but, as we do not wish to encourage State lotteries, we should prefer the subject to remain Central where, too, we hope, it will not be used.

SHARES IN CERTAIN TAXES

33. We have no new items to suggest for insertion in the Provincial Legislative List.

34. The Federal Government will levy and collect all the taxes in the Federal Legislative List. But, according to our recommendations in the following paragraphs the Centre will retain the whole of the net proceeds of the following taxes only, viz :

- (1) Duties of customs, including export duties.
- (2) Taxes on capital value of assets and taxes on the capital of companies.
- (3) Taxes on Railway fares and freights.

35. At present, the Central Government shares the net proceeds of the jute export duties with the jute-growing provinces and has to hand over to the provinces the whole of the net proceeds of taxes on railway fares and freights, if levied. As regards the latter, we recommend that, if such taxes are to be levied at all, they should be wholly Central, for, we cannot see any difference in substance between such taxes and a straight addition to fares and freights. As regards the former we are of the opinion that as export duties are capable of very limited application and have to be levied with great caution, they are unsuitable for sharing with the provinces.

36. It is necessary, however, to compensate the provinces concerned for the loss of this item of revenue, and we recommend that, for a period of ten years or till the export duties on jute and jute products are abolished, whichever may be earlier, fixed sums as set out below be paid to these Governments as compensation every year.

<i>Province</i>	<i>Amount</i>
	Rs.
West Bengal	100 lakhs
Assam	15 "
Bihar	17 "
Orissa	3 "

In arriving at these figures which we have based on the figures of pre-war years, we have taken all relevant circumstances into account, and in particular the concentration of manufacture in West Bengal. If at the end of ten years, which we think should be sufficient to enable the provinces to develop their resources adequately, the provinces still need assistance in order to make up for this loss of revenue, it would no doubt be open to them to seek grants-in-aid from the Centre, which would be considered on their merits in the usual course by the Finance Commission.

37. Of the remaining Federal taxes, we recommend that the net proceeds should be wholly or partly given away to the provinces as indicated below:

38. *Taxes on Income* : Under the present arrangement the provinces receive 50 per cent. of the net proceeds of income-tax, except what is attributable to Chief Commissioners' Provinces and taxes on Federal emoluments. The net proceeds of the Corporation Tax are also excluded for the purpose of the sharing. Subject to what we have said in paragraph 49 regarding tax on agricultural income, we recommend that, while the net proceeds attributable to Chief Commissioners' Provinces should be retained wholly by the Centre, the other reservations should go, and that the provinces should get not less than 60 per cent. of the net proceeds of all income-tax including the net proceeds of Corporation Tax, and taxes on Federal emoluments. For the purpose of the division, income-tax will mean any levy made under the authority of the entry "Taxes on Income" in the Federal Legislative List.

39. We also consider that over and above its share in the net proceeds retained by it normally, the Centre should be empowered to levy a surcharge whenever conditions require such a levy; obviously such occasions should be rare and not last for unduly long periods.

40. *Central Excise Duties* : Excise duties are ordinarily closely connected with customs duties and, barring liquor and drug excises, which we consider, should continue to remain provincial, are inherently not suited for provincial taxation. On the other hand, they are only a species of consumption taxes of which another species, namely, sales, turnover and purchase taxes have been the subject of provincial taxation for some time. The memoranda received by us from the Provincial Governments are almost unanimous in demanding some share under excises; and our problem is to find not only more resources for the units but to make their revenues more balanced. If it was possible to have excises on commodities not subject to Customs duties (whether revenue or protective) or not competing, or capable of competing with, or of substitution for, commodities

subject to Customs duties, *e.g.*, on rice or wheat or millets or on jute and jute goods consumed in India, we see no reason why such excises or a share thereof should not be allotted to the units, apart from the general political objection to the division of heads *viz.*, the divorce of benefit from responsibility. But such excises are not likely to be levied. Again, it is obvious that Excise duties on commodities subject to a protective tariff or even a high revenue tariff could not be conveniently shared. In the circumstances, the utmost that we can suggest by way of assistance in this respect of the Provincial Governments is to hand over to them a share of one of the important Central Excises on a commodity not receiving tariff protection, *viz.*, tobacco. Incidentally, the effective administration of this excise requires the active cooperation of Provincial Governments, which would be better forthcoming if they had a share in the tax. We are averse to giving the units a share in too many Central Excises; for, such an arrangement would not only magnify the political objection of benefit without responsibility but lead to administrative inconvenience, since the rates could not be altered except by the consent of all the beneficiaries.

We accordingly recommend that 50 per cent. of the net proceeds of the excise duty on tobacco should not form part of the revenues of the Federation but should be distributed to the provinces.

41. It will be seen from what has been said above that we are not in favour of the suggestion made in item VIII of the terms of reference *viz.*, that the Centre should be allocated only the excises on specified commodities, the rest of the field of excise being left to the provinces.

42. *Estate and Succession Duties* : These duties cannot be administered satisfactorily except by or in the closest touch with the income-tax staff; and in any case, if the Centre is to part with a substantial amount of taxes on income and also a part of certain Central excises, it is appropriate that it should get a share of the estate and succession duties. This will also give to the Federal Government a direct interest in the duty. Subject to what we have said in paragraph 49 about taxes on agricultural property, we recommend that not more than 40 per cent. of the net proceeds of such duties should be retained by the Centre.

43. *Federal Stamp Duties* : We recommend the continuance of the *status quo*, *i.e.*, the legislation in respect of the duties on the specified documents should be Central but provinces will collect and retain the duties.

44. *Terminal taxes on goods or passengers carried by railway or air* : These taxes are not suitable except for purely local purposes, *i.e.*, for the benefit of municipalities, pilgrim funds, etc., but they can be conveniently levied and collected only by the Centre. The existing provisions may stand.

GRANTS-IN-AID AND SUBVENTIONS

45. Item II of our terms of reference refers to Grants-in-aid.

Assam and Orissa now get fixed subventions of Rs. 30 and Rs. 40 lakhs per annum, respectively. The recommendations that we have made for the increase in the provincial share of income-tax and the transfer of a share in the excise on tobacco will increase their revenues substantially like those of other provinces. Even so, however, we have little doubt that these two provinces will still require fixed subventions on higher scales than at present.

The position of East Punjab is peculiar. Everything there is unsettled, and it will take some time for things to settle down. It is clear, however, that this province will require a substantial annual subvention for some time to come.

The position of West Bengal is uncertain, and it is not clear how her finances will shape as a result of the partition. The liability that she will have to take over as a result of the partition is not yet known. All told, however, she will perhaps need some temporary assistance.

46. For lack of time and data, we have not been able to assess the subventions required by these four provinces. We, therefore, recommend that the Central Government should immediately take up the question so that the amounts required by each of these provinces may be determined in time. The amounts should be subject to periodical review by the Finance Commission to which we refer later.

47. We have suggested elsewhere that till the Finance Commission has been able to recommend a better basis of distribution, a part of the divisible pool of income-tax should be used in order to mitigate hardship in individual cases. This provision also contains an element of grants-in-aid.

48. It is clear that during the developmental stages of the country it will be necessary for the Centre to make specific purpose grants to the provinces from time to time. The provisions of clause 203 of the Draft Constitution seem to be adequate for the purpose. We have considered the question whether, as in Australia, grants should be made in order to equalize, or at any rate to reduce the disparity between the levels of services and of severity of taxation in the different provinces. There is undoubtedly something attractive in seeking to bring up the backward units at least to 'average' standards, both in effort (severity of taxation) and in performance (standards of services). In Australia, the maximum difference between the levels is said to be of the order of 20 per cent. and the number of unit States is small. In India, on the other hand, as for example in the U.S.A., the difference in the levels is very wide and the number of units larger when acceding States come into the picture. In such a background 'averages' would be mere mathematical concepts totally unrelated to actual facts. On the other hand, even in a Federation of autonomous units, there is a great deal to be said for helping the less prosperous units to come up to the level of the more prosperous ones. As in all such matters we must

take a realistic decision with reference to the conditions in our country. While we do not recommend the adoption in this country of the Australian system, we have no doubt that the Centre, when distributing specific purpose grants under clause 203 of this Draft Constitution, will bear in mind the varying circumstances in the different provinces.

48A. Section 199 of the Draft Constitution provides for special assistance to Assam in respect of expenditure for promoting the welfare of Scheduled Tribes in the province. We agree with this provision. It has been represented to us on behalf of Orissa that a similar provision should be made for assisting her to develop the backward areas of the province. In the absence of any data, we have been unable to assess the measure of assistance, if any required by this province; and we content ourselves with expressing the view that if the Central Government, after a due examination of the question in all its aspects, decide that special assistance is necessary it should be provided on an adequate scale.

TAXES ON AGRICULTURAL INCOME AND PROPERTY

49. It is obvious that the taxation of agricultural income by the provinces, while all other income is taxed by the Centre, stands in the way of a theoretically sound system of income-tax in the country. We should, therefore, have liked to take this opportunity to do away with this segregation. In view of the ease with which the origin of agricultural income can be traced, it could be arranged that the tax from such income, even though levied and collected by the Centre as part of an integrated system of income-taxes, should be handed back to the provinces; and it could be further arranged that till such time as the Centre in fact levied a tax on agricultural income, the provinces already levying this tax might continue to levy it without restriction and with full power to vary the rates of tax. The interests of provinces could thus be fully protected, and there could, therefore, be no financial objections from them. On the other hand, the present arrangement has the political merit of keeping together in one place both benefit and responsibility, a rather important point, seeing that the provinces will have full control over but few important heads of revenue. A few provinces have, in fact, levied the tax and are administering it for some time. Perhaps also, the provinces can administer this particular tax with greater facility than the Centre. For the present, therefore, we have decided to continue the *status quo*, but, in view of the importance of the matter, would recommend that the provinces should be consulted at once and if a majority, including of course those now levying the tax, agree, tax on agricultural income may be omitted from the Provincial List of subjects, consequential changes being made elsewhere in the Constitution. Our foregoing remarks apply *mutatis mutandis* to Succession and Estate Duties on agricultural property also.

DIVISION OF PROCEEDS OF REVENUE BETWEEN PROVINCES

50. *Income-tax* : As regards the basis of distributing between provinces the share of proceeds from taxes on income, we are of the opinion that no single basis would lead to equitable results. Origin or *locus* of income is no doubt relevant, but in the complex industrial and commercial structure of modern times, where a single point of control often regulates a vast net-work of transactions, where the raw materials come from one place, are processed in another, manufactured in a third, marketed wholesale in a fourth and ultimately sold in retail over a large area, contracts are made at places different from where they are performed, money is paid in at one place and goods delivered at another and more than one of these stages relate to the same tax-payer, the assignment of a share of profits to each stage can only be empirical or arbitrary.

51. Again, the residence of the tax-payer is an important factor but apart from the artificial legal definition of residence for income-tax purposes, the predominance of joint stock enterprise in business, the dispersion of the shareholders of companies all over the country and even outside, the possibility (emerging from the artificial definition) of simultaneous residence in more than one area, the non-assessment (due to various reasons) of a large number of shareholders, and the absence of authoritative, *i.e.*, tested, information in the income-tax records as to the province of residence of a resident of India (for, today, it is immaterial to the Income-tax Department in which particular province an assessee is resident), all these together make this criterion of residence a difficult factor to apply in practice in distributing the proceeds of the tax. Even if the statistical difficulties were got over, residence could be changed at the will of the tax-payer.

52. Another possible criterion is the place of collection. This place is usually the principal place of business of the tax-payer, or his residence, if he is not carrying on a business or profession. The objection to this factor is that it is unfair to the areas of origin and sale which it completely ignores, while it gives far too much weight to the place of control of a business, which is usually, though not necessarily, the place of collection. Moreover, even more than in the case of residence, the place of collection can be easily altered at the will of the tax-payer.

53. Another possible basis is that of needs *i.e.*, the shares would be regulated somewhat like grants-in-aid, and rather than go into elaborate enquiries for this purpose, the population of a province could be taken as a rough measure of its needs. The objection to this basis is that a 'share' is something to which a province is entitled because its citizens or things have in some measure contributed to the fund, while a grant is something given to it without regard to its contribution to the Centre or to any common pool.

54. We have said enough to show the difficulties of the problem, but the

difficulties have somehow to be faced and met, unless we keep the whole of the taxes on income as Central and permit provinces simultaneously to levy a provincial income-tax on the basis of origin. In our opinion the latter course is not feasible in the circumstances of this country even if justifiable in theory; and pending enquiry by the Finance Commission the setting up of which we suggest later, we have no choice except somehow to make the distribution on as equitable a basis as can be devised in the circumstances.

55. We propose to proceed on the basis of collection as well as population and also to make some provision for adjustment on the basis of need. We recommend that the provincial share *i.e.*, 60 per cent. of the net proceeds be distributed among the provinces, as follows:

20 per cent. on the basis of population.

35 per cent. on the basis of collection.

5 per cent. in the manner indicated in paragraph 56.

60

For the distribution of the first two blocks, population figures of the previous census and collection figures as certified by the Auditor-General should be accepted as authoritative.

56. The third block of 5 per cent. should be utilized by the apportioning authority as a balancing factor in order to mitigate any hardship that may arise in the case of particular provinces as a result of the application of the other two criteria; in distributing this block it would be open to the authority to take into account all relevant factors.

57. *Excise duty on tobacco*: In our view, the most equitable method of distributing this duty is on the basis of estimated consumption. We have no doubt that the Government will take steps to obtain necessary statistical information if it is not already available.

58. *Estate and Succession Taxes*: These taxes have not so far been levied. One of the hurdles to be crossed before they can be levied is the determination of the manner of distribution of the net proceeds among provinces. Until the taxes are actually levied and collected for some time, no data about their incidence will be available. Hence, the levy will have to start with some *a priori* basis of apportionment among provinces. We accordingly recommend that until the Finance Commission is in a position to evolve a better method on the basis of data available to it, the net proceeds should be distributed among the provinces as follows:

The net proceeds attributable to real property—On the basis of the location of the property.

Of the balance—

75 per cent. on the basis of the residence of the deceased;

25 per cent. on the basis of the population of the province.

The administration and distribution of these taxes would, in the ordinary course, fall on the Central Board of Revenue, but it would be necessary to empower an appropriate authority to adjudicate in the case of disputes between provinces as to the residence of individuals.

EFFECT OF THE PROPOSALS

59. The net effect of all our recommendations together is that, on the present basis of revenue, the Centre will have to transfer to the provinces a sum of the order of Rs. 30 crores annually. It will recover a part of this loss by the imposition of the Estate and Succession Duties, of the net proceeds of which it will retain 40 per cent. We believe that it will not be beyond the capacity of the Centre to part with this amount annually during the next five years, though it must cause some strain, while at the same time the transfer will enable the provinces to start their programme of essential social services and economic development.

60. In our recommendations regarding the distribution of proceeds of taxes among the provinces, we have not only proceeded on more than one basis, but have provided for an element of flexibility in order to mitigate hardship. We have also provided for a periodical review so that the method of apportionment can be adapted to changing conditions from time to time on basis of experience. We have further provided for grants-in-aid both to the weaker provinces and to provinces in difficulty.

61. We have also tried to make the whole arrangement as automatic and free from interference as possible. The basic features of the scheme will be embodied in the Constitution itself, while periodic changes will be made by the President on the recommendation of the Finance Commission, which, we hope, will command the confidence of all. As frequent changes are undesirable, we have recommended a five yearly review though in special circumstances the Finance Commission may embark on a review at a shorter interval. The provinces will not be sure of their position and can go ahead with their plans.

62. It is needless for us to add that to the extent that the Centre transfers its resources to the provinces in the shape of new or increased shares in revenue, its ability to give grants to the provinces for specific or other purposes must be correspondingly reduced.

63. We may not have been able in our proposals to satisfy everybody or to provide for every contingency that may possibly arise in the future, but we have tried to do the best possible under the circumstances.

FINANCE COMMISSION

64. For reasons already stated, our recommendation as to the initial basis of apportionment among provinces is not intended to be permanent.

Conditions may change. The working of the scheme for some time will in itself produce some data that would indicate the nature and direction of the changes required. It is necessary, therefore, to have a periodical review of the whole position by a neutral expert authority.

65. We recommend for this purpose, among others, the appointment of a high level tribunal of five members including a Chairman who has been, or is, holding high judicial office, not lower than that of a judge of a High Court. This tribunal may be called the 'Finance Commission'. There may not ordinarily be enough work for the Commission to keep it busy continuously, and the members need not, therefore, devote their whole time to the work. The members should be appointed by the President in his discretion if only because a Commission of this kind would have frequently occasion to deal with points of conflict between the Centre and the units. While we would not lay down any conditions in the statute as to how these members should be selected, we recommend that two should be selected from a panel of nominees of unit Governments and two others from a panel of nominees of the Central Government, the Chairman being selected by the President. One at least of the five should possess close knowledge of the finances and accounts of governments, while another at least should have a wide and authoritative knowledge of economics. It would be an advantage if one or more were public men with wide experience. It would be a further advantage if a member possessed more than one qualification, and steps should be taken to secure the services of such individuals. The appointments might be made for five years and be renewable for another five years.

66. Between now and the setting up of the Finance Commission, we recommend that the Central Government should take steps in consultation with the provinces, to collect, compile and maintain statistical information on certain basic matters such as the value, volume and distribution of production, the distribution of income, the incidence of taxes, both Central and provincial, the consumption of important commodities, particularly those that are taxed or likely to be taxed, etc. The Finance Commission, when set up, would then have some basic information to go upon, and would no doubt call for such further information as it may need. It would also, to the extent necessary, arrange for continuous examination and research in respect of all important matters.

67. The Finance Commission should be entrusted with the following functions:

- (a) To allocate between the provinces, the respective shares of the proceeds of taxes that have to be divided between them;
- (b) To consider applications for grants-in-aid from provinces and report thereon;
- (c) To consider and report on any other matter referred to it by the President.

68. While these categories would exhaust the duties of the Commission, it should be open to the Commission to make any recommendations it may think expedient in the course of the discharge of these duties. It may, for example, suggest a variation in the heads of revenue assigned to the provinces, *i.e.*, the transfer of new heads or the withdrawal of existing heads, or increases in the shares of existing heads or a reduction in these shares. In making all such recommendations, the Commission will take into account all relevant matters, including the state of finances of the Centre. Its recommendations, in so far as they do not involve any change in the Constitution, would, when accepted by the President, be given effect to by him by order, while recommendations involving a change in the Constitution, if similarly accepted by him, would be dealt with like any other proposed amendment to the Constitution.

69. The Commission's first function would be of the nature of an arbitration, and therefore, the Commission's decisions will be final. As regards the second function, we have no doubt that the recommendation of the Commission in respect of grants-in-aid would be given the utmost weight by the President and not ordinarily departed from by him.

70. The basis for the allocation of revenues referred to in item (a) should ordinarily be settled by the Commission at intervals of five years, but it should be open to the Commission to shorten the interval if it feels satisfied in special circumstances that such shortening is called for.

71. We would further recommend, in order to save time, that the Finance Commission may be set up in advance of the coming into effect of the Constitution, and its status regularised after the Constitution comes into effect.

RESIDUARY POWERS OF TAXATION

72. It appears that under the new Constitution, residuary power will be vested in the Centre, so far as the provinces are concerned, while the corresponding residuary powers in respect of the States will be vested in the States themselves. The question has therefore been raised whether, as a consequence, as many specific taxes as possible should not be entered in the Provincial List of subjects. We cannot think of any important new tax that can be levied by the provinces, which will not fall under one or the other of the existing categories included in the Provincial List. We think that the chance of any practical difficulty arising out of the proposed constitutional position is remote, and, in any case, it seems to us that if a tax is levied by the Centre under its residuary powers, there will be nothing to prevent the proceeds of the whole or a part of this tax being distributed for the benefit of the provinces only. As a matter of abundant caution, however, it may be laid down in the Constitution that if any tax is levied by the Centre in future under its residuary powers, and to the extent that the States do not agree to accede to the Centre in respect of the

corresponding subject, the whole or a part of the proceeds of the tax shall be distributed between the provinces and the acceding States only. This disposes of item IX of our terms of reference.

EXEMPTION OF PROVINCIAL GOVERNMENTS FROM TAXATION

73. Section 155 of the Government of India Act provides that profits from trading by a Provincial Government would be taxable only if the trade was carried on outside the province. The exemption from Central taxation of trade by Provincial Governments carried on within the provincial limits did not matter much in the past; for the Governments had few trading operations. With the present tendency towards nationalization *e.g.*, many provinces have already taken up quite seriously the nationalization of road transport, the Centre should have some power to levy either income-tax or a contribution in lieu of income-tax in respect of these trading activities. Disputes as to such contributions should, we consider, be examined and adjudicated upon by the Finance Commission to which we have already referred. We feel that if nationalization of industries or trades takes place rapidly, the whole question would have to be reviewed *de novo*, for the entire structure of the tax system of the country would be completely changed.

74. In the meantime we make the following recommendations:

- (a) The existing practice should continue in respect of trading operations of the Central Government, *i.e.*, no income-tax should be levied on the profits. It should be open to the Centre, however, to levy a contribution, as in the case of Railways, for its sole benefit from such operations. If the trading is carried on by a separate juristic person, tax will be levied even if the Government is the dominant shareholder.
- (b) Tax should be levied on the trading operations of units (as also of local bodies), whether carried on within or without their jurisdiction; and the tax or the contribution in lieu thereof should be treated as ordinary income-tax revenue for the purpose of the divisible pool. We presume that if there are no profits, there will be no contribution; but if this presumption is wrong, we suggest that the contribution should be treated as part of the divisible pool of income-tax.
- (c) We recommend that quasi-trading operations incidental to the ordinary functions of Government such as the sale of timber by the forest department or of jail products by the jail department should not be treated as trading operations for this purpose.

EMERGENCY PROVISIONS

75. The needs of the Centre in times of emergency, such as war or large

scale internal disorder, cannot be provided for through the detailed allocation of heads of revenue or of shares therein. It is obviously not possible to legislate how emergencies should be met. We would suggest that there should be a special provision in the Constitution authorizing the President in an emergency to suspend or vary the financial provisions in such manner as he may think best in the circumstances. For example, if there is a war and an Excess Profits Tax is levied, it might be necessary for the Centre to retain the whole of this tax for itself.

PROCEDURE IN FINANCIAL MATTERS

76. Item X of our terms of reference is as follows:

Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters contained in sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?

77. The present financial procedure in the federal sphere is laid down in sections 33-37 of the Government of India Act, 1935. The corresponding clauses in the Draft Constitution as prepared by the Secretariat of the Constituent Assembly are 74, 75 and 77-81. We have two recommendations to make:

- (1) When a Money Bill is sent from the Lower House to the Upper, a certificate of the Speaker of the Lower House saying that it is a Money Bill should be attached to, or endorsed on, the bill and a provision to that effect should be made in the Constitution on the lines of the corresponding provision in the Parliament Act, 1911. This will prevent controversies about the matter outside the Lower House.
- (2) After clause 80, a provision may be made making it necessary for Government to approach the Legislature for regularizing any excess expenditure that might be discovered in audit after the close of the year. This is, in fact, done even now, but there is no statutory obligation to do so.

Subject to these two recommendations, we approve of the provisions in the Draft Constitution.

78. Financial procedure in the provincial field is governed by sections 78-82 of the Government of India Act, 1935. The corresponding provisions in the Draft Constitution occur in clauses 149-153. We recommend:

- (1) that in a province with a bicameral legislature, if any, the powers of the Upper House over Money Bills should be exactly the same as at the federal level;
- (2) that the new provision, in respect of a vote on excess grants, recommended by us at the federal level should be repeated at the provincial level also.

79. It is usual in written democratic constitutions to provide that no

money can be drawn from the treasury except on the authority of the legislature granted by an Act of appropriation. In this country, the practice has been to authorize expenditure by resolutions of Government after the demands have been voted, and not by law. As the existing practice has been working well in this country, appropriation by law does not appear to be necessary.

AUDITOR-GENERAL

80. Though the question has not been specifically referred to us, we consider that the status and powers of the Auditor-General are so closely connected with financial procedure that we have gone into this matter also. The provisions in respect of the Auditor-General of the Federation are contained in clauses 106-109 of the Draft Constitution, and those in regard to the Auditor-General of the provinces, in clauses 174-175. In substance, all these clauses repeat the existing provisions in the Government of India Act. We consider the provisions to be adequate for the purpose of securing the independence of the Auditor-General. We notice that the Auditor-General of India is to perform the functions of the Auditor-General in respect of the Provincial Governments also for an initial period of three years, and thereafter, until a particular Provincial Government chooses to appoint its own Auditor-General. We favour the continuance of a single Auditor-General for the Government of India as well as for the Provincial Governments, and it is possible that the Provincial Governments will also prefer that course, and will choose not to use their power of appointing a separate Auditor-General of their own. The Draft Constitution, however, gives them the option to appoint Auditors-General if they think fit so to do. We are not sure whether it is possible altogether to do away with this option, much as we should like to do so; but if the option remains, we recommend that the provisions of sub-clause 3 of clause 174 should be amended so as to make the Auditor-General of a province eligible for appointment as Auditor-General of another province also.

BORROWING POWERS

81. This question is covered by item I of our terms of reference.

The present position is that the provinces have the freedom to borrow in the open market in India except when they are indebted to the Centre. The most outstanding advantage of the freedom of borrowing is the sense of financial responsibility it creates; for, there is no more accurate, sensitive and dependable meter of the credit of a borrowing Government than the reaction of the securities market. We do not therefore wish to withdraw this freedom. Nevertheless, it is necessary to have some machinery which would ensure that borrowing Governments do not, by their competition,

upset the capital market. This machinery is now provided through the Reserve Bank which advises all the Governments, but in view of the ambitious programmes of development both by the Centre and by the units, it may become necessary to set up some kind of expert machinery, both competent and definitely empowered, to fix the order of priority of the borrowings of the different Governments. In some countries, this co-ordination is effected either by a Ministerial Conference or by a Loans Council. Such machinery should not affect the responsibility of a Government for its borrowing policy and should help only in the timing of the loan and avoidance of unnecessary competition. The co-ordination by the Reserve Bank has worked well in practice, and so long as it works well we do not recommend any change. We assume that there will be no distinction between federating States and the provinces in this respect.

82. We are of the opinion that it should not be open to a Provincial Government or to a Government of a State to go in for a foreign loan except with the consent of the Federal Government and except under such conditions, if any, as the Federal Government may think fit to impose at the time of granting the consent. We notice, however, that there is an entry, *viz.*, "18. Foreign Loans" in the Federal Legislative List in the Draft Constitution. We are not sure whether, the insertion of this entry in the Federal Legislative List is enough to prevent the Government of a unit from going in for a foreign loan. We, therefore, recommend that the point be examined, and if the provision is not found to be adequate, a specific provision should be made in clause 210 of the Draft Constitution making it necessary for the Government of a unit to obtain the consent of the Federal Government before going in for a foreign loan.

PROBLEM OF INDIAN STATES

83. The points at issue are contained in items III, IV, V, VI and XI of our terms of reference.

This part of our work is the most difficult part thereof, and the difficulty arises as much from the lack of statistical data as from the complications of the problem itself; for, not only do conditions differ widely between the provinces as a whole and the States as a whole, but from State to State, so that it is difficult to apply a common yard-stick.

84. The Union Powers Committee of the Constituent Assembly in para. 2(d) of their report, dated 17th April, 1947, has expressed its view on this subject in the following terms : "We realize that, in the matter of industrial development, the States are in varying degrees of advancement and conditions in British India and the States are in many respects dissimilar. Some of the above taxes are now regulated by agreements between the Government of India and the States. We, therefore, think that it may not be possible to impose a uniform standard of taxation throughout the Union all at once. We

recommend that uniformity of taxation throughout the units may, for an agreed period of years after the establishment of the Union not exceeding 15, be kept in abeyance and the incidences, levy, realization and apportionment of the above taxes in the State units shall be subjected to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation." We entirely agree with these observations.

85. We assume that the ultimate object of the Federation must be to secure for the federating States the same, or nearly the same standards of economic development, fiscal arrangements and administrative efficiency as in the provinces. It is only against this background that the States can have the same identity of interest with the Union as the provinces have.

86. The first difficulty met with in our investigation is that many of the smaller States have neither a budget nor effective audit, so that adequate and reliable information about their financial position, on a basis permitting comparison with provinces, is not available. We recommend accordingly that it should be made obligatory within as short a period as possible for each State to arrange for the preparation and authorization of a periodical budget and the maintenance of proper accounts and audit and to send copies of its budget, accounts and audit reports to the Union Government.

87. In the absence of sufficient data, we are not in a position to make recommendations other than of a general nature. We are clear in our mind that the States should gradually develop all the taxes in the Provincial Legislative List so that they may correspondingly give up reliance on taxes in the Federal Legislative List. This process however would necessarily take some time; and in the meanwhile it will be necessary to have transitional arrangements.

88. We will now take up Land Customs. We do not recommend the immediate abolition of Land Customs, for we find that such a course would lead to a serious dislocation in the finances of many States. Moreover, where there is no large re-export trade, these land customs, though a possible source of annoyance, are really of the nature of octroi duty levied at a few points of entry. On a long view, however, in the interests of the States themselves, these duties might be replaced by other taxes, such as sales and turn-over taxes. We recommend accordingly that Land Customs now levied by the States should be abolished during the next ten years. As a first step it may be arranged that—

- (1) a State shall not in future levy land customs on a commodity on which there is no such duty now;
- (2) a State shall not after a fixed date increase the rate on any commodity; and
- (3) a State levying land customs should grant refunds on re-exports.

Gradual abolition over a period of ten years should not cause any serious dislocation to the finances of these States, nor can there be any question of paying any compensation to these States, for the simple reason that the Union Government will not gain any corresponding revenue.

89. Maritime customs should be uniform all through the Union, and the Federal Government should take over the administration of such customs in all the maritime States. If this arrangement results in the loss of any State of the revenue now enjoyed by it, it is only fair that the State should be compensated for the loss. Pending determination of the appropriate compensation in each case by a States Commission, the appointment of which we recommend in a later paragraph, each State may be given an annual grant equal to the average revenue from this source during the last three years. The right of Kashmir to a rebate on sea customs may be similarly abolished on payment of a similar grant.

90. The Federal Government may levy Central Excises in all the States, but those States which now enjoy the benefit of a part or the whole of these revenues raised in their areas should, in lieu of such benefit, receive grants on the basis of the average revenue enjoyed by them from these sources during the last three years. In our opinion, neither this arrangement nor the one referred to in the foregoing paragraph should present any difficulty from the purely financial point of view either to the Union or to the States.

91. The Indian Income-tax Act, with such modification as may be considered necessary by the President, may be applied to all the federating States. The net proceeds of the tax attributed to the States may be credited to a States Income-tax Pool and such portion not being less than 75 per cent of the net proceeds attributable to each State, as determined by the President, may be paid back to the States.

We are aware that many problems will arise in the course of allocating these proceeds between the different States, but they are not insoluble, and can be solved on lines similar to those followed in allocating similar revenues between the provinces.

92. The need for a uniform system of income-tax both in the provinces and in the States has become urgent not only because of the facilities afforded for evasion and avoidance of the Central Income-tax by the existence of States with lower rates of taxation or no tax at all, but also because it is alleged that industries are being diverted artificially by the incentive of lower taxation to areas not inherently suited for the industries.

93. Though we do not favour any abrupt change in the *status quo*, we do not attach much weight to the argument that the States are, as a whole, industrially backward and that they cannot, therefore, stand the same high rates of taxation, particularly income-tax, as the provinces can. If the productive capacity of a State, and consequently its level of income, is low, it follows that the State will not have to contribute much by way of tax if

it falls in line with the provinces. If, on the other hand, the point is that industries should be artificially stimulated in the States somehow by the incentive of lower taxes, it is obvious that if the State is not suited for industrial development, the cost of bolstering up its industries must ultimately fall upon the provinces and other States.

94. As already stated, we are not in a position to make detailed recommendations regarding the States. We recommend for this purpose the establishment of a States Commission with five members who should possess wide knowledge of the financial administration of Provincial, Federal or State Governments. Preferably, one of these members might be a member of the Finance Commission (for Provinces) referred to earlier in this report. The commission should advise the President, as also the States, about their financial systems and suggest methods by means of which the States could develop their resources and fall into line with the provinces as quickly as possible. One of the first tasks of the commission will be to examine in detail the privileges and immunities enjoyed by each State, and also the connected liabilities, if any, and recommend a suitable basis of compensation for the extinction of such rights and liabilities. We consider in particular that the States Commission should deal with the problems before it with understanding and sympathy and suggest solutions which would not only be fair both to the States and to the provinces, but enable the States to come up to the provincial standards in as short a time as possible.

95. The States which come into the above arrangements would pay their contribution for Defence and other Central Services through the share of the net proceeds of Central taxes retained by the Centre, and nothing more should be expected from those States. On the other hand, the States which accede but do not come into the above arrangements, should pay a contribution to the Centre, the amount of which should be determined by the States Commission having regard to all the relevant factors.

96. The constitutional arrangements in this respect, particularly during the interregnum of fifteen years, should, in our opinion, be kept very flexible. The President should be enabled by order to adopt any financial arrangement he may find expedient with each State until such arrangement is altered by an Act of the Federal Legislature after necessary consultation with the States.

97. While the outlines which we have indicated above are capable of being applied to most of the major or even middle-sized States, it is, in our opinion, necessary to group together a number of smaller States in sizable administrative units before they can be brought into any reasonable financial pattern.

98. We are sorry that we have not been able to contribute anything more precise than what we have done to this part of the terms of reference to us.

99. We enclose two Appendices (IV and V) one of which sets out in detail, as far as we have been able to collect, the rights and immunities

enjoyed by various States, and the other setting out the total budgets of certain States and the part played by Land Customs in those budgets.

SUMMARY OF RECOMMENDATIONS

100. (1) No major change to be made in the list of taxes in Federal Legislative List as recommended by the Union Powers Committee. (Para. 30)

(2) The limit of Rs. 50 to be raised to Rs. 250 for taxes on professions etc. levied by local bodies. (Para. 30)

(3) An entry to be made in the Federal Legislative List of a new item "Stock Exchanges and Futures Markets" etc. (Para. 30)

(4) A few minor changes of a drafting nature to be made in the list of taxes in the Provincial Legislative List; and no new items for insertion in the Provincial Legislative List. (Paras. 31-33)

(5) The Centre to retain the whole of the net proceeds of the following taxes, viz. (a) Duties of Customs including Export Duties; (b) tax on capital value of assets, etc.; (c) taxes on Railway fares and freights; and (d) Central Excises other than on tobacco. (Para. 34)

(6) The grant of fixed assignments for a period of years to the jute-growing provinces to make up for their loss of revenue. (Paras. 35-36)

(7) The net proceeds of the following taxes to be shared with the Provincial Governments, viz. (1) Income-tax including Corporation Tax; (2) Central Excise on tobacco; (3) Estate and Succession Duties. (Paras. 38-42)

(8) The suggestion that the Centre should be allotted only the excises on specified commodities, not accepted. (Para. 41)

(9) Federal Stamp Duties and terminal taxes on goods, etc. to be administered centrally, but wholly for the benefit of the provinces. (Paras. 43 and 44)

(10) Larger fixed subventions than now, necessary for Assam and Orissa, and subventions for limited periods for East Punjab and West Bengal, but no precise figures recommended for lack of data. (Paras. 45 and 46)

(11) Grants-in-aid on the Australian model not favoured. (Para. 48)

(12) Merging the tax on agricultural income in the Central Income-tax and similarly the Estate and Succession Duties on agricultural property in the similar duties on property in general to be examined in consultation with Provincial Governments and transfers made from the Provincial List of subjects, if necessary. (Para. 49)

(13) Not less than 60 per cent of the net proceeds of Income-tax including Corporation Tax and the tax on Federal emoluments, to be divided between provinces in the following manner :

20 per cent. on the basis of population, 35 per cent. on the basis of collection and 5 per cent as an adjusting factor to mitigate hardship. (Paras. 55 and 56)

(14) Not less than 50 per cent. of the net proceeds of the excise on tobacco

to be divided between provinces on the basis of estimated consumption. (Para. 57)

(15) Not less than 60 per cent. of the net proceeds from Succession and Estate Duties to be divided between the provinces on the following basis : Duties in respect of real property on the basis of allocation of the property, and of the balance, three-fourths on the basis of the residence of the deceased and one-fourth on the basis of population. (Para. 58)

(16) Net effect of the recommendations, to transfer annually a sum of the order of Rs. 30 crores from the Centre to the provinces. (Para. 59)

(17) A Finance Commission with a High Court Judge or ex-High Court Judge as Chairman and four other members to be entrusted with the following functions : viz. (a) allocation between the provinces of their shares of centrally administered taxes assigned to them; (b) to consider applications for grants-in-aid for provinces and report thereon; (c) to consider and report on other matters referred to it by the President. (Paras. 65-67)

(18) The Commission to review the position every five years, or, in special circumstances, earlier. (Para. 70)

(19) A tax levied by the Centre under its residuary powers, not to enure to the benefit of a non-acceding State unless it agrees to accede to the Centre in respect of that subject. (Para. 72)

(20) Trading operations of units, as of local bodies, whether carried on within or without their jurisdiction, to be liable to Central Income-tax or a contribution in lieu, but quasi-trading operations incidental to the normal functions of Government not to be taxed. (Para. 74)

(21) The President to be empowered in an emergency to suspend or vary the normal financial provisions in the Constitution. (Para. 75)

(22) A few minor changes suggested in regard to the procedure in financial matters. (Para. 77)

(23) No change to be made in respect of borrowing powers of units. (Paras. 81-82)

(24) Early arrangement to be made for the preparation of regular budgets and the maintenance of appropriate accounts and audit by all acceding States. (Para. 86)

(25) States gradually to develop all the taxes in the Provincial Legislative List and correspondingly give up taxes in the Federal List. (Para. 87)

(26) Maritime customs and excises in States to be taken over by the Centre, the States being compensated therefor, if necessary. (Paras. 89 and 90)

(27) The Indian Income-tax Act to be applied to all the federating States, and 75 per cent. of the net proceeds attributable to the States to be divided between them. (Para. 91)

(28) A States Commission to be set up with five members with wide knowledge of the financial administration of Provincial, Federal or State Governments. (Para. 94)

(29) The States Commission to examine the privileges and immunities etc. of States and to suggest suitable compensation for the extinction of these rights and liabilities. (Para. 94)

(30) States which do not come into the arrangements to pay a contribution to the Centre to be determined by the States Commission. (Para. 95)

(31) The *interim* constitutional arrangements with the States to be flexible and small States to be grouped together. (Paras. 96 and 97)

CONCLUSION

101. Some of our recommendations would need to be embodied in the Constitution while others would be given effect to by the order of the President. We have attempted a draft of the necessary provisions in the Constitution to give effect to the former; and these are set out in Appendix VI.

102. Mr. Rangachari has signed this report in his personal capacity, and the views expressed in it should not be treated as committing in any manner the Ministry of Finance of which he is an officer.

NALINI RANJAN SARKER,
V. S. SUNDARAM,
M. V. RANGACHARI.

APPENDIX I

CONSTITUTIONAL POSITION OF THE CENTRAL AND THE PROVINCES IN RESPECT OF REVENUE UNDER THE GOVERNMENT OF INDIA ACT, 1935

(a) *Revenues of the Federation*

(1)	(2)	(3)	(4)
From Taxes	From Commercial Sovereign Functions Operations.	From Commercial Sovereign Functions Operations.	Contributions from States—Assigned by His Majesty.
<p>A. Levied and collected by the Federation but belonging wholly to the provinces or units.</p> <p>1. Duties on Succession to property other than agricultural land.*</p> <p>2. Stamp Duties on Bills of Exchange, Cheques, Promises, Bills of Lading, Letters of Credit, Policies of Insurance, Proxies and Receipts.†</p> <p>3. Terminal taxes on goods or passengers carried by Railways and other means of transport.</p> <p>4. Taxes on Railway fares and freights.* (Subject to the right of the Federation to raise Federal Revenue by a surcharge on all the items in this list.)</p> <p>B. Levied and collected by the Federal Government of which a portion is or may be assigned to the provinces</p> <p>a. Assigned by the Act.</p> <p>1. Income-tax other than Corporation Tax. (Subject to Federal Surcharge)‡</p> <p>2. Jute Export Duty.¶</p> <p>b. May be assigned by Federal Law.</p> <p>1. Duty on Salt.§</p> <p>2. Other duties of Excise on tobacco and on other goods manufactured or produced in India except—</p> <p>(a) alcoholic liquor for human consumption.</p> <p>(b) Opium, hemp, and other narcotics, and non-narcotic drugs.</p> <p>(c) medicinal and toilet preparations.||</p> <p>3. Duties of Export.||</p> <p>C. Levied and collected by Federation and, belonging wholly to the Federation.</p> <p>1. Taxes in Lists A & B in areas administered by the Federal Government.</p> <p>2. Customs.</p> <p>3. Corporation Tax.</p> <p>4. Surcharges mentioned in Lists A & B.</p> <p>5. Taxes on capital values of assets of individuals and companies.</p> <p>6. Miscellaneous receipts from fees in respect of matters in Federal List (including fees taken in the Federal Court).</p>	<p>1. Posts & Telegraph.</p> <p>2. Federal Railways.</p> <p>3. Banking.</p> <p>4. Other Commercial Operations.</p>	<p>1. Coinage and Currency.</p> <p>2. Escheat and lapse in areas administered by Federal Government.</p>	<p>1. Tributes and other payments.</p>

*Not yet levied.

†These duties continue to be both levied and collected by the provinces.

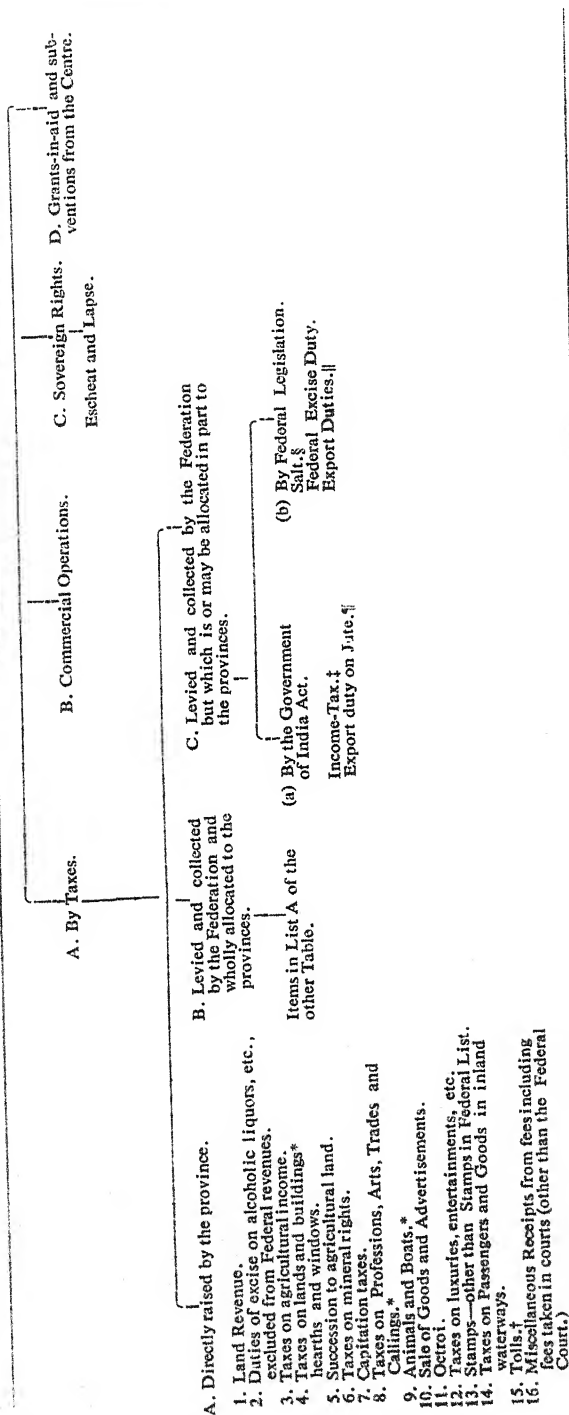
‡Levied so far only for the benefit of local bodies.

§See notes under the other Table.

¶Duty now abolished.

||No share assigned to provinces.

(b) *Revenues of the Province*



*These taxes are now raised by municipal and other local authorities for their needs.

†Now abolished—but before abolition was a source of Municipal Taxation.

‡By Order in Council 50% of the net proceeds of tax on income other than Corporation Tax exclusive of proceeds attributable to Chief Commissioners' Provinces and taxes in respect of Federal emoluments are distributable in accordance with a prescribed ratio.

§62½% assigned to provinces by Order in Council distributed among Jute producing provinces in proportion to the respective amounts of Jute grown in them.

¶Duty abolished.

¶¶No share allotted to provinces.

APPENDIX II

FINANCIAL POSITION OF THE PROVINCES AND THE CENTRE FROM 1937-38 TO 1946-47

(a) *Provinces*

(In lakhs of Rupees)

Province	Provincial Revenue	Devolution Grants from the Centre including Dev. Grants	Total Revenue	Total Revenue Expenditure	Cumulative Deficit (—) Surplus (+)	Balances in Reserve Funds on 31st March 1947	Closing balance on 31st March 1947
Madras . . .	2,63,27	24,12	2,87,39	2,84,22	+ 3,17	29,18	56
Bombay . . .	1,92,52	26,51	2,19,03	2,06,69	+ 12,34	17,07	42
Bengal . . .	1,65,35*	69,92	2,35,27	2,51,13*	—15,86	25	2,48
United Provinces . . .	1,79,33	26,77	2,06,10	2,04,99	+ 1,11	17,31	6,43
Punjab . . .	1,84,12	11,51	1,95,63	1,60,46	+ 35,17	6,79	57
Bihar . . .	75,06	15,10	90,16	81,81	+ 8,35	7,78	1,07
C. P. & Berar . . .	63,61	7,69	71,30	70,66	+ 64	8,14	2,41
Assam . . .	35,54	7,89	43,43	42,89	+ 54	1,02	1,54
N. W. F. P. . . .	11,94	11,55	23,49	22,95	+ 54	15	63
Orissa . . .	17,71	7,93	25,64	25,11	+ 53	10	60
Sind . . .	55,19	10,27†	65,46	60,04	+ 5,42	8,14	8

*Subsidy of 3,00 in 1943-44 taken by Bengal as reduction of Expenditure on Famine. Hence Revenue and Expenditure both have been increased by 3,00.

†The subvention was capitalised on 1st April 1944 and the value set off against the Lloyd Barrage Debt.

Revised Estimates have generally been taken for 1946-47.

(b) *Central Government (1937-38 to 1946-47)*

(In lakhs of Rupees)

Year	Revenue	Expenditure			Deficit (—) Surplus (+)
		Civil	Defence	Total	
1937-38	86,61	39,39	47,22	86,61	..
1938-39	84,52	38,97	46,18	85,15	—63
1939-40	94,57	45,03	49,54	94,57	..
1940-41	1,07,65	40,57	73,61	1,14,18	—6,53
1941-42	1,34,57	43,33	1,03,93	1,47,26	—12,69
1942-43	1,77,12	74,28	2,14,62	2,88,90	—1,11,78
1943-44	2,49,95	81,44	3,58,40	4,39,84	—1,89,89
1944-45	3,35,71	1,00,77	3,95,49	4,96,26	—1,60,55
1945-46	3,61,18	1,24,38	3,60,23	4,84,61	—1,23,43
1946-47 (Revised Estimate) . . .	3,36,19	1,43,36	2,38,11	3,81,47	—45,28
TOTAL	19,68,07	7,31,52	18,87,33	26,18,85	—6,50,78

The amounts included in the above on account of revenue assigned to the provinces and grants-in-aid and subventions to them are given below:

(In lakhs of Rupees)

Year	Share of Jute Export Duty	Share of Income tax	Grants-in- aid and Subven- tions
1937-38	2,65	1,25	3,14
1938-39	2,51	1,50	3,05
1939-40	2,56	2,79	3,04
1940-41	1,85	4,16	3,04
1941-42	1,95	7,39	3,03
1942-43	1,40	10,90	2,76
1943-44	1,38	19,50	5,75(a)
1944-45	1,49	26,56	8,70(b)
1945-46	1,57	28,75	9,70(c)
1946-47 (Revised Estimate)	2,80	29,87	1,70
TOTAL	20,16	1,32,67	43,91(d)

(a) Includes 3,00 Special Grant to Bengal.

(b) Includes 7,00 Special Grant to Bengal.

(c) Includes 8,00 Special Grant to Bengal

(d) Includes 7 roundly in all for Coorg.

APPENDIX III

SUMMARY OF PROVINCIAL SUGGESTIONS

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
1	2	3	4
<i>Part I—Taxes</i>			
1. Income tax (other than on agricultural income). [Sec. 138 of the Government of India Act, 1935 and item 54 in Federal Legislative List.]	A maximum of 50% of the net proceeds to be distributed among provinces.	Madras . Bombay .	A minimum of 50% of net proceeds. 75% of income tax and corporation tax receipts for provinces or 75% of the corporation, income and super taxes paid by residents in a province to be earmarked for that province. From the divisible pool from corporation and income tax 33½% should be allotted to Bombay which is the largest single contributor to the revenue.
		U.P. .	50% for provinces on population basis.

1	2	3	4
		C.P. & Berar	75% tax on agricultural income also should be collected by Centre.
		West Bengal	60% to be distributed in proportion to the collection of these taxes in provinces.
		Bihar	Even on the basis of population Bihar should have received 17 crores as against 13 allotted. In future none of the poorer provinces should get an amount lower than that payable on the basis of population. The distribution should be governed not by residence of the assesses but by the place where the income is earned. The basic factors must be population and the place where the income is earned. If any modifications are to be made they must be done with the object of assisting the financially poorer provinces among which Bihar is at the very bottom.
		Orissa	Distribution of 50% may continue as at present; but the percentages should be revised taking into consideration the factor also of the state of development in addition to those of population and residence used by Sir Otto. Due weightage to be given to undeveloped provinces. Should the provincial share exceed 12 crores, 75% of the excess may be left to the discretion of the Central Government.
		East Punjab	After the partition the East Punjab Province faces a deficit of about 3 crores; its share of income tax proceeds should be very appreciably increased to meet the deficit fully.
		Assam	75%. There should be a drastic revision of the shares of provinces in income tax receipts having regard to the facts that Sind and N.W.F.P. go out, that the amounts now available in the divisible pool have enormously exceeded the original estimate and some provinces are now getting, as a result, income tax amounts exceeding the entire revenues of some others.

1	2	3	4
2. Corporation Tax (Item 46 in Federal Leg. List).	Wholly Federal	Madras .	At least 50% of the net proceeds to go to provinces.
		Bombay .	75% for provinces.
		U.P. .	50% for provinces on population basis.
		C.P. & Berar	C. P. suggests the inclusion of Corporation Tax and taxes on Capital and Capital Assets in taxes on income for distribu- tion.
3. Central Excise duties on tobacco and other goods except alcoholic liquor (Item 46).	There is provision for sharing in full or in part [Sec.140(1)] but not so far shared.	Madras .	Should be entirely provincialized.
		Bombay .	Should be provincialized or not less than 50% of the net pro- ceeds in each producing unit to be allotted to that unit.
		U.P. .	Should be entirely provincialized and distributed on population basis.
		C.P. & Berar	Should be provincialized or 75% should be allotted to provinces. The duty should cover some more articles such as rubber goods, papers, etc.
		West Bengal	25% of the Federal excise should be allocated to provinces.
		Bihar .	A portion of the duty should be distributed on the basis of the yields in different pro- vinces.
		Orissa .	A portion may be distributed to provinces gradually parti- cularly as the provinces are now faced with the loss of their excise revenue.
		Assam .	At least 75 per cent. of the excise duty collected on her oil should be allotted to Assam. At least 50 per cent. of the other excise duties (Sugar, Steel, Matches, Tobacco and Betel Nuts) to be given to the producing units on a formula combining factors of province of production, size of population and level of revenue expenditure.
4. Export Duties on jute and jute products.	62½ per cent of net proceeds [Section 140 (2).]	West Bengal	75 per cent. should accrue to the provinces growing and manu- facturing jute.
		Bihar .	The entire net proceeds of the jute producing provinces should be distributed pro- portionately among the con- cerned provinces.

1	2	3	4
5. Export Duties .	..	Madras .	At least 50 per cent. of net proceeds of all export duties should be distributed to provinces according to principles formulated by Federal Legislature. Analogy of jute duty arrangement cited.
		Bombay .	50 per cent. of net proceeds.
		U.P. .	All export duties should be entirely provincialized and distributed on population basis.
		C. P. & Berar	Export duty on minerals (Coal and Manganese, etc.) should be allotted to C. P. (Jute analogy).
		West Bengal	25 per cent. of net proceeds of export duties other than jute.
		Orissa .	A portion may be distributed to provinces gradually particularly as the provinces are now faced with the loss of their excise revenue.
		Assam .	At least 75 per cent. of the sale proceeds of export duty realized on her tea.
6. Succession duties, Federal Stamp duties, Terminal taxes (Railway & Air), Taxes on Railway Fares & Freights.	Provided for full distribution to provinces (Sec. 137).	Madras .	It should be provided that the net proceeds shall not form part of the revenues of the Federation but shall be distributed to the provinces according to principles formulated by the Federation.
		U.P. .	The provisions should be fully utilized to augment the resources of provinces.
		C.P. & Berar	Succession duties in respect also of agricultural land should be transferred from the provincial to the Federal list. The duty should be on <i>ad valorem</i> basis.
		West Bengal	The provincial governments should be empowered to levy them if the Central Government do not levy them.
		Assam .	50 per cent. of income from increase in railway fares and freights above the levels determined by the Railway Budget of February 1947 to go to provinces on population ratios weighted by a given factor in favour of provinces with smaller revenues and expenditure.
7. State Lotteries .	Federal (Item 48 Federal Leg. List).	C.P. & Berar	Should be transferred to Provincial List.

1	2	3	4
8. Taxes on trades, professions, callings and employment.	Provincial tax, Sec. 142-A, Item 46 in Provincial list.		The limit of Rs. 50 p.a. should be removed and gradation according to capacity should be provided for.
9. Taxes on sales and advertisements.	(Item 48 in Provincial list).		Sales tax should be levied in all provinces and acceding states.

Part II—Non-tax proposals

U.P.

(1) The inequity of the Niemeyer Award should be rectified and the central allocation for U. P. should aim at a minimum of 6 or 7 crores p. a. going up to 12 or 13 crores in the space of 10 years.

(2) The consolidated debt due from the U.P. to the Government of India should be wiped off.

(3) The Government of India should share losses on the food grains scheme as originally promised by them.

C.P. & Berar

A system of central grants derived after taking into account such factors as natural resources, stage of industrial development, taxable capacity, etc., is essential. An expert financial enquiry should be undertaken.

West Bengal

(1) Provision for federal aid to provinces for social and amelioration work.

(2) There should be a Finance Commission on the lines of the Commonwealth Grants Commission in Australia.

Bihar

If any grants-in-aid or subventions are given in future the per capita revenue and expenditure in each province during the last ten years should be kept in mind. Those with low per capita revenue and expenditure should be given greater assistance than the richer.

Orissa

The broad lines of the present allocation may be maintained in the new Constitution; but the subvention of 40 lakhs fixed for the province should be increased; it should be stated as a percentage of the

1	2	3	4
			<p>revenues of the Central Government and in any case there should be a minimum annual subvention of 150 lakhs.</p> <p>Enforcement of the policy of prohibition and judicial panchayats will make the provincial administration impossible unless the Central Government multiplies its grants and subventions very liberally.</p> <p>Abolition of the <i>zamindari</i> system would seriously affect land revenue and stamps. Make every one pay according to his capacity. Provide for a well regularised house tax on a provincial scale; a tax on passengers.</p> <p>Nationalization of industry will wash away the twin anchor sheets of Central finance—Income tax and Customs.</p>
	East Punjab	(1) Particularly as the East Punjab is now to be the frontier of the Indian Dominion, there is a strong case for a recurring subvention of more than 1 crore for it (N.W.F.P. used to get 1 crore.)	
		(2) A non-recurring subvention for the capital of the province. (Orissa was given such a grant.)	
	Assam	There is an obvious case for an upward revision of the subventions granted to Orissa and Assam.	
		Assam as a frontier as well as a backward province of India deserves special treatment.	
		Its royalty of 5 per cent. on oil (as against 10 times that amount of central excise) is unfair. Large amounts of income accrue in Assam but are assessed in Calcutta which is headquarters of the concerned companies. Some provinces like Bombay and Bengal have been allowed to get a large share of increase tax receipts because of their claim to be territorially responsible for the production of the incomes. Assam is entitled to similar consideration in regard to certain items of central revenues.	

APPENDIX IV

RIGHTS AND IMMUNITIES ENJOYED BY THE STATES

(A) Annual value of the immunities enjoyed by the States under Sea Customs, Currency and Coinage

State	Year to which the figures relate	Rs. in lakhs	Remarks (See footnote)
<i>(i) Sea Customs</i>			
Kutch	1945-46	21.18	(1)
Bhavnagar	Do.	0.19	(2)
Morvi	Do.	6.80	(3)
Junagadh (excluding Mangrol)	Do.	12.65	(3)
Nawanagar	Do.	15.27	(3)
Porbandar	Do.	3.63	(3)
Cambay	Do.	2.00	(4)
Baroda	1943-44	22.98	(5)
Janjira	1945-46	3.00	(6)
Cochin	1944-45	22.70	(7)
Travancore	Do.	17.99	(7)
Sawantwadi	Do.	0.12	(8)
Mangrol	Do.	2.33	(9)
Kashmir	1945-46	11.00	(10)

(ii) Currency and Coinage

Hyderabad	1945-46	105.55
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(6th October 1945—5th October 1946)

FOOTNOTE

(1) In connection with Federation, the proposed method of calculating the immunity in the case of Kutch was as follows:

To the trade figures supplied by the State the British Indian tariff rates should be applied and from this total should be deducted the difference between the duty calculated at British Indian tariff rates and that actually collected at State rates on goods not consumed in the State itself.

As the figures necessary to apply this formula are not available the figures given in the statement represents simply the amounts of customs duty retained by the State in 1945-46.

(2) The value of the immunity in the case of Bhavnagar is the total of customs collections made and retained by the State. The figures for 1945-46 is abnormal.

The figures for 1930-31 to 1935-36 were as follows:

Year	Rs.
1930-31	51,02,974
1931-32	75,91,016
1932-33	81,93,368
1933-34	99,32,628
1934-35	1,21,55,668
1935-36	61,62,300

(3) The value of the immunity in these cases is represented by the total customs collections less the amount payable to the Central Government under the agreements.

(4) By the agreement of 1938 Cambay is allowed to retain whichever is greater of the following two amounts:

(i) Rs. 2 lakhs; or

(ii) a proportion of the customs duties collected at the State ports on the basis of population with suitable adjustments to correct difference between the proportion of the urban population to the rural population in the State and the whole of India respectively.

Since the net customs revenue collected by the State during 1945-46 was only Rs. 6,993 the State was entitled to receive from the Central Government the difference between that figure and Rs. 2 lakhs. The immunity in this case is therefore Rs. 2 lakhs.

(5) Baroda is entitled to retain all the duty collected by it up to a maximum of 1 per cent of the average customs revenue of British India and until this maximum is reached, the immunity is represented by the State's collections. The latest figures available are given here.

(6) Annual payment under the 1940 Agreement, which represents the State's immunity.

(7) The immunity of Travancore and Cochin is represented by their share of the pool produced by the collection of duty at the British port of Cochin, at Cochin ports and Travancore backwaters. In addition it is necessary to include for Travancore the annual collections of customs duty at their ports other than the backwater ports; and in respect of commodities such as tobacco, on which Travancore levies duty at rates other than British Indian rates, the amount of duty at those rates is substituted for the actual collections.

(8) The immunity is represented by the compensation payment of Rs. 13,433 less Rs. 1,700 allotted for abolition of land customs under the Agreement of 1838.

(9) Actual amount collected and retained by the State.

(10) Drawback from customs on goods imported by sea through British India.

(B) Note prepared by the Ministry of States on excise arrangements with Indian States

Matches : In respect of match excise there is a pooling arrangement with the States. The main principle is that the whole of the proceeds of the tax collected in any State are made over to the general pool and the whole proceeds of the pool divided between British India on the one hand and the various States that agree to come into the pool on the other on the basis of population, regardless of whether matches are manufactured or not, in the States. Import of matches from the States that have not joined this arrangement, is prohibited. The conditions that a State is required to accept for admission to the pool are—

(a) The States should levy duty on matches produced in their territories by means of British Indian banderols and pay the proceeds into the common pool.

(b) The British Indian procedure for the levy and collection of duty should be followed.

Licence fees and fines are not included in the pool. Deduction on account of collection charges at a uniform rate is allowed. The present rate is 3 per cent of the net collections. The total net revenue is distributed among the various States and British India on the basis of population. While the amount contributed by States during 1944-45 to the pool was Rs. 44,38,970 the amount actually paid to the States was Rs. 1,00,66,875. The British Indian realization was Rs. 5,46,26,781.

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3. *Sugar* : Arrangements were made in 1934 with the sugar producing States where they were required to levy the same rates of excise and under the same conditions as in force in British India in return for which sugar produced in Indian States was to be admitted free to British India. Soon after the outbreak of war, arrangements were made with the major sugar producing States, whereby in addition to compliance with the 1934 arrangements these States undertook to hand over to the Central Government the excess of their earnings from sugar excise in any year above the highest revenue derived from the sugar excise in any of the three years preceding 1939-40. As regards States which had not till then developed a degree of production materially in excess of their own consumption and States which had not commenced production, the Residents were asked to watch and report developments. All producing States were, however, requested to levy the same duty as in British India. In the case of such States where production now exceeds consumption, the arrangement is that the State retains duty on the basis of population at the rate of Rs. 3/20 per capita revenue.

The sugar producing States are—

A	B
Mysore	Baroda
Phaltan	Hyderabad
Kolhapur	Udaipur
Kapurthala	Gwalior
Rampur	Aundh
Jaora	Nabha
Bhopal	Kashmir
Sangli	
Miraj	

The States falling in category A above produce sugar in excess of their requirements and those falling in category B less than their requirements. Of the first mentioned States, negotiations were satisfactorily concluded with the first five. Bhopal which is surrounded on three sides and Jaora which is surrounded on all sides by Indian States, taking full advantage of their geographical position did not accept the settlement at first. Jaora, however, agreed to surrender its surplus revenue from 1942-43. Sangli and Miraj States only recently developed their sugar factories and have agreed to surrender the surplus revenue on the basis of the formula at 'A' above but have protested for revision of the arbitrary figure of actual consumption represented by 3/20ths. The matter is under consideration.

The amount retainable by Indian States and the average duty collected are as follows :

Name of State	Amount retainable	Average collection
	Rs.	(Rs. in lakhs)
Mysore	12,91,135	17
Kapurthala	2,52,000	8
Kolhapur	2,33,592	4
Rampur	11,43,532	16
Phaltan	5,21,262	
Sangli	44,007	Not known
Miraj	6,944	Not known

Following is the contribution by the above States to the Central Exchequer in respect of the year 1945-46—

	Rs.
Mysore . . . . .	..
Kapurthala	6,47,368
Kolhapur	2,26,820
Rampur . . . . .	..
Phaltan	1,40,585
Sangli	1,07,869
Miraj	59,268

Information regarding the amount to be surrendered by Mysore and Rampur, is still awaited.

* * *

7. *Tobacco*: All States are expected to levy the British Indian rate of duty. (Some States where production is not of much consequence levy excise on the basis of acreage in view of the high cost of administration.) The States are entitled to retain the proceeds of the excise duty subject to the limit, on the basis of their population, worked out in accordance with the following formula—

$$A = \frac{R \times p}{P}$$

Where A is the limit retainable by a State :

R, the total net revenue in any year calculated from 1st April to 31st March, collected in British India and all the participating States (*i.e.*, the gross revenue less the cost of collection, licence fees, penalties, fines etc.);

P, the population of the State concerned ;

P, the population of British India and all the participating States.

Some States have not come into the scheme and the tobacco of such States on entry into British India is confiscated and released on payment of fine and penalty. Although section 5 of the Central Excises and Salt Act 1944 empowers us to impose customs duty equivalent to the excise duty, the provisions of this section have not been involved because it has been possible to realize an amount equivalent to the excise duty on State tobacco under rule 32 of the Central Excise Rules by means of confiscation. Hyderabad has not accepted the formula and does not share the revenue with the Government of India although it has legislated on the lines of British India. No restrictions have been imposed on the entry of Hyderabad tobacco into British India.

To facilitate movement of tobacco from and to the States, a special procedure for the movement in bond has been devised. Under this procedure the duty is realised at destination and credited to a suspense account. The amounts realised on the State tobacco is at the end of the year credited to the State and is taken into account in the State's realizations for purposes of the formula. The revenue contributable by the States during the years 1943-44 and 1944-45 were Rs. 51,38,809 and Rs. 1,48,07,552 respectively.

8. *Vegetable Product* : The formula is the same as in respect of tobacco. The only States concerned at present are Mysore and Cochin although the other States were asked to legislate and have legislated on the matter. Of the two States, namely, Cochin and Mysore, Cochin's contribution to the Central Revenues during the years 1943-44 and 1944-45 was Rs. 76,160 and Rs. 41,212 respectively. The Mysore State has nothing to pay under the formula.

9. *Tea, Coffee and Betel Nuts* : The States concerned are :

Tea : Mysore, Travancore, Cochin; Tripura, Mandi;

Coffee : Mysore, Travancore, Cochin ;

Betel Nuts : Mysore, Travancore, Cochin, Tripura, Sawantwadi and Janjira.

The rates of duty imposed by Travancore are as follows :

Betel Nut	. . . . .	As. 1/6 per lb.
Coffee	. . . . .	As. -/6 per lb.
Tea	. . . . .	As. 1/9 per lb.

The same formula as in respect of tobacco has been adopted in respect of these excises also, although the Board's intention was that 'P' in respect of these excises should denote the population of all India and not limited to participating States and British India as in the case of tobacco. Mysore and Travancore, the two important States, have been clamouring for a revision of the formula. In the case of Travancore the following revised formula has been offered :

$$a = \frac{T}{P}$$

Where a denotes per capita consumption figure ;

T, the total quantity of the article taxed in British India and in other participating units ;

P, the total population of British India and other participating States.

On the basis of the per capita consumption figure worked out, the amount retainable by the State will be worked on the basis of the following formula :

$$A = a \times d \times p$$

Where A = amount retainable by the State ;

a = per capita consumption figure of British India and the participating units ;

d = rate of excise duty levied by the State ;

p = Population of Travancore.

The excess over 'A' plus cost of collection will have to be surrendered by the State. The State's acceptance of the formula has not yet been received.

In the case of Mysore, we have agreed in respect of coffee that the amount retainable by the State may be determined on the basis of the Coffee Controller's statistics of coffee consumption in the State. Mysore has accepted this formula and is pressing for a similar formula in respect of betel nuts. After a recent tour, the Board has stated that after the establishment of the Betel Nut Marketing Board, it may be possible to adopt the coffee formula in respect of betel nuts also.

(C) Statement showing the value of service postage stamps supplied annually free to States

S. No.	Name of State	Value
		Rs.
1	Alwar	30,000
2	Baroda	1,25,000
3	Bharatpur	12,000
4	Bhopal	8,380
5	Bikaner	37,000
6	Bushahr	600
7	Cooch Behar	9,000
8	Datia	5,000
9	Dhar	3,000
10	Faridkot	1,000
11	Gwalior	480
12	Idar	550
13	Indore	35,000
14	Jhalawar	2,400
15	Jabbal	250
16	Kalsia	450
17	Kashmir	20,000
18	Kotah	15,000
19	Loharu	300
20	Malerkotla	900
21	Mandi	700
22	Marwar	39,000
23	Panna	900
24	Sikkim	1,500
25	Sirmoor	1,275
26	Suket	700

(D) Statement showing the values of immunities granted annually to Indian States in the shape of free conveyance of their official correspondence within the State limits

Name of State	Value of the immunity	Remarks
	Rs.	
(1) Mysore	21,38,182	Combined figure for the portion of the State in the Madras and Bombay Circles.
(2) Hyderabad	5,440	
(3) Banganapalle	365	
(4) Pudukottai	37,960	
(5) Baroda	14,705	
(6) Bhor	68	
(7) Jawhar	3,627	
(8) Bhopal	49,177	
(9) Rewa	1,72,380	

(E) Statement showing the amounts of telephone revenue accruing in India on behalf of Indian States and vice versa

Amount of revenue accruing in India on behalf of States					
		1944-45	1945-46	1946-47	
		Rs.	Rs.	Rs.	
1. Kashmir	. . . . .	1,912 3 0	2,731 3 0	1,646 13 0	
2. Jammu Tawi	. . . . .	3,880 0 0	4,475 5 0	4,005 4 0	

Amount of revenue accruing in States on behalf of India					
		1944-45	1945-46	1946-47	
		Rs.	Rs.	Rs.	
1. Kashmir	. . . . .	1,702 5 0	2,375 1 0	1,187 7 0	
2. Jammu Tawi	. . . . .	3,608 1 0	4,133 12 0	1,501 3 0	

APPENDIX V

STATEMENT SHOWING REVENUE AND THE PERCENTAGE OF LAND CUSTOMS INCLUDED IN THE REVENUE OF CERTAIN STATES

(In lakhs of Rupees)

S. No.	Name of State	Total Revenue (Ordinary)	Land Customs	Percentage	Remarks
1	2	3	4	5	6
1	Hyderabad .	943	124	13.2	
2	Travancore .	611	89	14.6	
3	Kashmir .	557	117	21.0	
4	Gwalior .	303	41	13.5	
5	Jaipur .	197	23	11.6	
6	Baroda .	434	20*	4.6	*Includes Sea Customs, figures of which are not separately available.
7	Jodhpur .	224	40	17.8	
8	Udaipur (Mewar)	81	1	1.3	
9	Indore .	305	27	8.9	
10	Bikaner .	252	29	11.5	
11	Alwar .	90	44	48.9	
12	Bhopal .	124	20	16.1	
13	Kotah .	48	6	12.5	
14	Tehri-Garhwal .	23	4†	17.4	†Includes Excise also.
15	Bharatpur .	65	23	35.4	

1	2	3	4	5	6
16	Cutch . .	89	1	1.1	
17	Patna . .	30	6	20.0	
18	Sarguja . .	17	5	29.4	
19	Nawanagar . .	110	19‡	17.3	‡Includes Sea Customs, figures of which are not separately available.
20	Tonk . .	34	11	32.3	
21	Bundi . .	29	8	27.6	
22	Sirohi . .	21	4	19.0	
23	Dungarpur . .	22	8	36.4	
24	Banswara . .	13	3	23.1	
25	Partabgarh . .	8	3	37.5	
26	Jhalawar . .	7	1	14.3	
27	Jaiselmer . .	6	3	50.0	
28	Shahpura . .	4	1	25.0	
29	Denta . .	3	1	33.3	
30	Palanpur . .	28	5	17.9	
31	Idar . .	45	17	37.8	
32	Balasinor . .	5	1	20.0	
33	Lunawada . .	10	2	20.0	
34	Sant . .	12	2	16.7	
35	Chhota Udaipur . .	24	2	8.3	
36	Radhanpur . .	23	4	17.4	
37	Baria . .	18	1	5.6	
38	Dewas (Junior) . .	23	4	17.4	
39	Panna . .	10	1§	10.0	§Includes Tributes &c.
40	Ratlam . .	17	6	35.3	
41	Alirajpur . .	6	1||	16.7	|| Includes Sayar.
42	Bijawar . .	7	1¶	14.3	¶Includes Biyai.
43	Chhatarpur . .	5	2	40.0	
44	Barwani . .	12	2	16.6	
45	Jaora . .	22	3	13.6	
46	Rajgarh . .	12	1	8.3	
47	Sailana . .	6	1	16.6	
48	Jhabua . .	13	4	30.8	

APPENDIX VI

AMENDMENTS RECOMMENDED IN THE DRAFT CONSTITUTION

Provisions relating to procedure in financial matters

Clause 75 : To clause 75 add the following, namely :

- (4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under section 74, and when it is presented to the President for assent under section 76, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

Clause 79 : In sub-clause (3) of clause 79, for the words "succeeding section" substitute the words "two succeeding sections".

New clause 80-A : After clause 80, insert the following new clause, namely :

80-A. *Excess grants :* If in any financial year expenditure from the revenues of the Federation has been incurred on any service for which the vote of the House of the People is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the House of the People and the provisions of sections 78 and 79 shall have effect in relation to such demand as they have effect in relation to a demand for a grant.

Clause 145 : For sub-clause (1) of clause 145, substitute the following, namely :

(1) Subject to the special provisions of this Part of this Constitution with respect to Money Bills, a Bill may originate in either House of the Legislature of a Province which has a Legislative Council.

(1a) Subject to the provisions of sections 146 and 146-A, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a Province having a Legislative Council unless it has been agreed to by both Houses either without amendments or with such amendments only as are agreed to by both Houses.

Clause 146 : For clause 146, substitute the following, namely :

146. *Passing of Bills other than Money Bills in Provinces having Legislative Councils :* (1) If a Bill which has been passed by the Legislative Assembly of a Province having a Legislative Council and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill :

Provided that nothing in this section shall apply to a Money Bill.

(2) If at a joint sitting of the two Houses summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in the joint sitting is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses :

Provided that at a joint sitting :

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendments shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill ;

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed in the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

New clauses 146-A and 146-B : After clause 146, insert the following clauses, namely :

146-A. *Special provisions in respect of Money Bills :* (1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a Province having a Legislative Council it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

- (3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly, and if the Legislative Assembly does not accept any of the recommendations of the Legislative Council, it shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.
- (4) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period of thirty days in the form in which it was passed by the Legislative Assembly.

146-B. Definition of "Money Bill": (1) For the purposes of this chapter, a Bill shall be deemed to be a Money Bill if it makes provision—

- (a) for imposing or increasing any tax ; or
 - (b) for regulating the borrowing of money or the giving of any guarantee by the Province or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Province ; or
 - (c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure.
- (2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition or increase of any tax by any local authority or body for local purposes.
- (3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Legislative Assembly thereon shall be final.
- (4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under section 146-A after it has been passed by the Legislative Assembly, and when it is presented to the Governor for assent under section 147, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

Clause 148: In the proviso to clause 148, after the words "Provided that" insert the words "if the Bill is not a Money Bill".

Clause 151: In sub-clause (3) of clause 151, for the words "succeeding section" substitute the words "two succeeding sections".

New clause 152-A: After clause 152, insert the following clause, namely :

152-A. Excess grants: If in any financial year expenditure from the revenues of the Province has been incurred on any service for which the vote of the Legislative Assembly is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Assembly and the provisions of sections 150 and 151 shall have effect in relation to such demand as they have effect in relation to a demand for a grant.

Clause 153: For clause 153, substitute the following clause, namely :

153. Special provisions as to financial Bills: (1) A Money Bill or an amendment thereto shall not be introduced or moved except on the recommendation of the Governor.

- (2) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a House of the Provincial Legislature unless the Governor has recommended to that House the consideration of the Bill.

Provisions relating to the Auditor-General of the Province

Clause 174: For sub-clause (3) of clause 174, *substitute* the following, namely:

- (3) The Auditor-General of a Province shall be eligible for appointment as Auditor-General of the Federation or as Auditor-General for any other Province but not for any other appointment either under the Federation or under the Government of a unit after he has ceased to hold his office.

Provisions relating to distribution of revenues between the Federation and units and miscellaneous financial provisions

Clause 194-A: For clause 194-A, *substitute* the following, namely:

194-A. Interpretation: In this Part—

- (a) "Finance Commission" means the Finance Commission constituted under section 202-A of this Constitution;
- (b) 'unit' does not include a Chief Commissioner's Province.

Clauses 196 to 199: For clauses 196 to 199, *substitute* the following, namely:

196. Certain succession duties: (1) Duties in respect of succession to property other than agricultural land and estate duty in respect of property other than agricultural land shall be levied and collected by the Federation, but sixty per cent. or such higher percentage as may be prescribed of the net proceeds in any financial year of any such duty, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that duty is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

- (2) If any dispute arises as to the distribution of the net proceeds of any such duty among the units, it shall be referred for decision to such authority as may be appointed in this behalf by the President and the decision of such authority shall be final.

196-A. Certain terminal taxes: Terminal taxes on goods or passengers carried by railway or air shall be levied and collected by the Federation, but the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

196-B. Certain stamp duties: Such stamp duties as are mentioned in the Federal Legislative List shall be levied by the Federation and collected, in case where such duties are leviable within any Chief Commissioner's Province, by the Federation and in other cases, by the units within which such duties are respectively leviable, but the proceeds in any financial year of any such duty leviable in that year within any unit shall not form part of the revenues of the Federation, but shall be assigned to that unit.

197. Taxes on income: (1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but sixty per cent., or such higher percentage as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in such manner as may be prescribed:

Provided that the Federal Parliament may, at any time, increase the said taxes

by a surcharge for federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

- (2) In this section, "taxes on income" includes any sum levied by the Federation in lieu of any tax on income but does not include any contributions levied by the Federation in respect of its own undertakings.

198. *Salt duties and excise duties*: (1) No duties on salt shall be levied by the Federation.

- (2) Federal duties of excise shall be levied and collected by the Federation but, if an Act of the Federal Parliament so provides, there shall be paid out of the revenues of the Federation to the units to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the units in accordance with such principles of distribution as may be prescribed:

Provided that fifty per cent., or such higher percentage as may be prescribed, of the net proceeds in any financial year of the excise duty on tobacco, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation but shall be assigned to the units within which that duty is leviable in that year, and shall be distributed among the units in such manner as may be prescribed.

198-A. *Taxes not enumerated in any of the lists in the Ninth Schedule*: If any tax not mentioned in any of the lists in the Ninth Schedule to this Constitution is imposed by Act of the Federal Parliament by virtue of entry 90 of the Federal Legislative List, such tax shall be levied and collected by the Federation but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

198-B. *Grants in lieu of jute export duty*: Until the abolition of the export duty levied by the Federation on jute or jute products or the expiration of ten years from the commencement of this Constitution, whichever is earlier, there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the Provinces mentioned below the sums respectively specified against those Provinces:

<i>Province</i>	<i>Sum</i>
West Bengal	100 lakhs of rupees
Bihar	17 lakhs of rupees
Assam	15 lakhs of rupees
Orissa	3 lakhs of rupees

199. *Grants from Federation to certain units*: Such sums as the President may, on the recommendation of the Finance Commission, by order fix shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of such units as the President may on such recommendation determine to be in need of assistance, and different sums may be fixed for different units:

Provided that there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the Provinces of Assam and Orissa the sums of thirty and forty lakhs of rupees respectively or such higher sums

as the President may on the recommendation of the Finance Commission fix in respect of either of these Provinces :

Provided further that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of a Province such capital and recurring sums as may be necessary to enable that Province to meet the costs of such schemes of development as may be undertaken by the Province with the approval of the Federal Government for the purpose of promoting the welfare of the Scheduled Tribes in the Province or raising the level of administration of the scheduled areas in the Province to that of the administration of the rest of the Province:

Provided also that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of the Province of Assam sums, capital and recurring, equivalent to—

- (a) the average excess of expenditure over the revenues during the three years immediately preceding the date of commencement of this Constitution in respect of the administration of the areas specified in Part I of the table appended to paragraph 19 of the Eighth Schedule to this Constitution; and
- (b) the costs of such schemes of development as may be undertaken by that Province with the approval of the Federal Government for the purpose of raising that level of administration of the said areas to that of the administration of the rest of the Province.

Clause 200 : In sub-clause (2) of clause 200, for the word “fifty”, wherever it occurs, substitute the words “two hundred and fifty”.

New clause 201-A : After clause 201, insert the following clause, namely :

201-A. Application of the provisions relating to distribution of revenues during the period a Proclamation of Emergency is in operation : Where a Proclamation of Emergency is in operation whereby the President has declared that the security of India is threatened, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the President may, by order, direct that all or any of those provisions shall, until the expiration of the financial year in which such Proclamation ceases to operate, have effect subject to such exceptions or modifications as may be specified in such order.

Clause 202 : For clause 202, substitute the following, namely:

202. Definition of ‘prescribed’ and calculation of ‘net proceeds’ etc. : (1) In the foregoing provisions of this Chapter—

(a) ‘prescribed’ means—

- (i) until the Finance Commission has been constituted, prescribed by order of the President; and
- (ii) after the Finance Commission has been constituted, prescribed by order of the President on the recommendation of the Finance Commission ;

(b) ‘net proceeds’ means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty in or attributable to any area shall be ascertained and certified by the Auditor-General of the Federation, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision in this Chapter, an order of the President may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any unit, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

New Clauses 202-A and 202-B : After clause 202, insert the following clauses namely :

- 202-A. Finance Commission :* (1) There shall be a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President in his discretion.
- (2) The Chairman shall be a person who holds or has held judicial office not inferior in rank to that of a Judge of a High Court.
- (3) The members of the Commission shall receive such remuneration as the President may by order determine and shall hold office for a term of five years and may on the expiry of such term be re-appointed for another term of five years.
- (4) It shall be the duty of the Commission to perform the functions conferred on the Commission by this Chapter or by any other law for the time being in force and to give advice to the Federal Government upon such financial matters or to perform such other duties of a financial character as may from time to time be referred or assigned to it by the President.
- (5) The Commission shall determine its procedure and shall have such powers in the performance of its functions as the President may by order confer on it.
- 202-B. Recommendations of the Finance Commission :* The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum as to the action taken thereon by the President to be laid before the Federal Parliament.

Clause 207 : To clause 207, add the following Explanation, namely :

Explanation : For the purposes of this section, any undertaking by the Government of any unit, such as the sale of the forest produce of any forest under the control of such unit or of any article produced in any jail within such unit, shall not be deemed to be a trade or business, carried on by or on behalf of such Government.

Provisions relating to borrowing

Clause 210 : In sub-clause (3) of clause 210, for the word "Province", in the two places where it occurs, substitute the word "unit".

Ninth Schedule—Provincial Legislative Lists

In the Provincial Legislative List in the Ninth Schedule—

- (1) in entry 43, omit the words "hearth and windows";
- (2) for entry 50, substitute the following, namely:
50. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the Province of goods liable to taxes within the Province on sale, turnover or purchase; taxes on advertisement;
- (3) in entry 53, for the word "Cesses" substitute the word "Taxes"; and
- (4) in entry 56, for the word "Dues" substitute the word "Taxes".

PART FOUR

MINUTES OF THE MEETINGS OF THE DRAFTING
COMMITTEE

August 1947—February 1948

MINUTES OF THE MEETINGS OF THE DRAFTING
COMMITTEE

August 1947—February 1948

[The Order of Business Committee, in its second report dated July 9, 1947 [see Vol. I, Document No. 81(iii)] had recommended to the Constituent Assembly the appointment of a committee to scrutinize the draft of the Constitution before its submission to the Assembly. Accordingly, on August 29, the Assembly adopted a resolution authorizing the appointment of a Drafting Committee "to scrutinize the draft of the text of the Constitution of India prepared by the Constitutional Adviser, giving effect to the decisions taken already in the Assembly and including all matters which are ancillary thereto or which have to be provided in such a Constitution, and to submit to the Assembly for consideration the text of the draft Constitution as revised by the committee".

The committee consisted of seven members, namely, Alladi Krishnaswami Ayyar, N. Gopalaswami Ayyangar, B. R. Ambedkar, K. M. Munshi, Mohammad Saadulla, B. L. Mitter and D. P. Khaitan. In case any of the members was unable to attend any meeting or if there arose a vacancy, the President was authorized to make necessary arrangements. B. L. Mitter was unable to attend any of its meetings after the first sitting of the Drafting Committee as he ceased to be a member of the Constituent Assembly. N. Madhava Rao was nominated on December 5, 1947 by the President in his place.

At its first meeting held on August 30, the Drafting Committee elected B. R. Ambedkar as its Chairman. The committee sat from day to day, from October 27, 1947, considering each article of the draft. In all it met on 42 days. The minutes of the meetings of the Drafting Committee are reproduced below.

The draft of the Constitution, as settled by the Drafting Committee, was submitted to the President of the Assembly on February 21, 1948: the committee continued to function and dealt with suggestions for amendments made from time to time. On February 5, 1947, in the vacancy caused by the death of D. P. Khaitan, T. T. Krishnamachari was nominated to the committee in view of the valuable contribution he had made to the work of the Constituent Assembly.]

August 30, 1947

Present : (1) The Hon'ble Dr. B. R. Ambedkar; (2) Shri N. Gopalaswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Shri Hussain Imam; (6) Sir B. L. Mitter; (7) Shri D. P. Khaitan.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri K. V. Padmanabhan, Under Secretary.

The Hon'ble Dr. B. R. Ambedkar was unanimously elected Chairman of the committee. The committee considered the various points raised by Shri Gopalaswami Ayyangar in his letter dated the 30th August to the President on the work of the Drafting Committee. The following programme of work was decided upon. The Constitutional Adviser's draft should be sent out by the office so as to reach the members of the committee by September 22 and the committee should commence its next series of meetings from October 3. The committee should finish the scrutiny of the draft by October 24; and the Draft Bill should be sent to the press by October 27. Printed copies should be ready by November 5. Members of the Constituent Assembly should receive copies of the Draft Bill by November 10. The Constituent Assembly would meet on November 20 to consider the draft.

It was suggested that the printing of the Draft Constitution should be so arranged as to leave a very wide margin for members to make their remarks. The lines on each page were to be numbered 5, 10, 15, 20 etc., as suggested by Shri Gopalaswami Ayyangar.

The other suggestions made in Shri Gopalaswami Ayyangar's letter were also accepted and the office was asked to keep all material in readiness before the committee met again. Apart from the printing of the committee reports as adopted by the Assembly during the current session, the office should prepare seven separate sets of the minutes of the more important committees for the use of the members of the Drafting Committee.

Detailed instructions were given to the office in regard to the material to be prepared for the assistance of the committee regarding the financial provisions to be included in the Draft Constitution, particularly with reference to the Indian States. Shri Gopalaswami Ayyangar also suggested that the office might collect all available information regarding the taxes levied by the various Indian States, particularly customs by maritime States, and land customs by inland States. In his opinion, it was essential to get the services of an expert in financial matters from the Finance Department to give necessary assistance to the committee.

It was also decided by the committee that the Prime Minister of each province should be requested to communicate in writing to the Secretary of the Constituent Assembly his views on the working of the provisions relating to the distribution of revenues between the Centre and the provinces as contained in the Government of India Act, 1935, for their consideration by the committee.

October 27, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Shri D. P. Khaitan; (6) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri Jugal Kishore Khanna, Deputy Secretary; (3) Shri P. N. Krishna Mani, Assistant Secretary.

The Chairman placed before the committee a letter* written to him by the President suggesting that the Draft Constitution as prepared by the Constitutional Adviser may be published for the information of the public. The committee was of opinion that the Draft Constitution should not be published at this stage, but it might be so published after the committee had finally settled the draft.

2. The committee then considered certain amendments proposed to the Constituent Assembly Rules with regard to the procedure to be followed for the consideration and passing by the Assembly of the Draft Constitution and the introduction, consideration and passing of Draft Bills for amendment of the present constitution under the Indian Independence Act, 1947. The committee approved the proposed rules subject to the following modifications, namely :

(1) that in the new rule 38-A proposed, for the words "the Government of India Act, 1935 as adapted by the India (Provisional Constitution) Order, 1947" the following shall be substituted, namely :

the Indian Independence Act, 1947 or any order made thereunder or to the Government of India Act, 1935 as adapted by the said Act.

(2) For rule 38-R, the following rule shall be substituted, namely :

38-R. (1) When a motion that the constitution be taken into consideration has been carried and all amendments of the constitution moved have been considered, any member may move that the constitution be passed :

Provided that the President may, before allowing the motion to be moved, refer the constitution as amended after it was taken into consideration to the Drafting Committee referred to in sub-rule (1) of rule 38-L for the re-numbering of the clauses, the revision and completion of the marginal notes thereof and the making of such formal or consequential amendments therein as may be required.

(2) When the constitution has been referred to the Drafting Committee under the proviso to sub-rule (1) and the committee has presented its report any member may move that the constitution as revised by the committee be passed.

(3) To a motion moved under sub-rule (1) or sub-rule (2) no amendment may be moved which is not either formal or consequential upon an amendment made after the constitution was taken into consideration.

*See Annexure.

(3) In rule 38-S—

(a) To sub-rule (2), the following proviso shall be added, namely:
 Provided that the President may, before allowing the motion to be moved, refer the Bill as amended after it was taken into consideration to a committee consisting of the members of the Assembly appointed by him for the re-numbering of the clauses, the revision and completion of marginal notes thereof and the making of such formal or consequential amendments therein as may be required.

(b) For sub-rule (4), the following sub-rules shall be substituted, namely :

(4) When the Bill has been referred to a committee appointed under the proviso to sub-rule (2) and the committee has presented its report any member may move that the constitution as revised by the committee be passed.

(5) To a motion moved under sub-rule (2), sub-rule (3) or sub-rule (4), no amendment may be moved which is not either formal or consequential upon an amendment made after the Bill was taken into consideration.

(4) For rule 38-U, the following rules shall be substituted, namely :

38-U. When the constitution is passed by the Assembly, a copy of the constitution shall be submitted to the President and shall be signed by him and when it has been so signed it shall be deemed to have been validly enacted.

38-V. When a Bill is passed by the Assembly, two copies of the Bill shall be submitted to the President and shall be signed by him and the copy of the Bill so signed shall be submitted to the Governor-General for his assent, and if assented to by him it shall be published in the Gazette of India as an Act passed by the Constituent Assembly assented to by the Governor-General.

The committee expressed the opinion that in view of the provisions of the Indian Independence Act, 1947, all Bills for amendment of that Act or the Government of India Act, 1935 should be presented for assent to the Governor-General, but that it was not necessary for the constitution when it is passed to be presented for assent to the Governor-General and suggested that the proposed rule 38-U should be revised as stated above.

3. The committee thereafter took into consideration the Draft Constitution as prepared by the Constitutional Adviser.

Preamble : The consideration of the *Preamble* was held over.

Clause 1 : It was decided that this clause should be replaced by the following clause :

1. (1) As from the commencement of this Constitution 'India' shall be a Union of States.

(2) The States shall mean—

(a) the Governors' Provinces of Madras, Bombay, West Bengal, the United Provinces, East Punjab, Bihar, the Central Provinces & Berar, Assam and Orissa,

(b) the Chief Commissioners' Provinces of Delhi, Ajmer-Merwara, Coorg and the Andaman and Nicobar Islands and the area known as Panth Piploda,

(c) the Indian States mentioned in the First Schedule to this Constitution and

Such other States as may be admitted into or established by the Union.

(3) The territories of India shall comprise the territories of each of the States referred to in sub-section (2) and such other territories as may be acquired by India.

The committee decided to sit from 10.30 A.M. to 1.00 P.M. every day.

The committee adjourned till 10.30 A.M. tomorrow the 28th October, 1947.

ANNEXURE

LETTER DATED OCTOBER 10, 1947 BY PRESIDENT RAJENDRA PRASAD TO THE
CHAIRMAN OF THE DRAFTING COMMITTEE

It has been suggested that the Draft Constitution should be published and copies should be made available to the public before it is put up for consideration by the Constituent Assembly at its next session. I consider this suggestion reasonable. It is desirable that the public should be kept informed about the shape that the constitution is taking and it can be done only if the draft is made available. I should, therefore, like to act according to the suggestion. There is, however, one point which requires consideration. The draft that we have got at present is a draft prepared by the Constitutional Adviser. It is based partly on decisions arrived at by the Constituent Assembly and partly it covers also points about which no decisions have been taken. The question is whether the draft as prepared by the Constitutional Adviser should be published or whether we should await the report of the Drafting Committee and publish the draft as finalized by it. There is one difficulty. The report of the committee is not likely to be available till about the third or fourth week of November. The Constituent Assembly will be meeting in the second week of December. There will not be much time for the public to study the draft if it is published at that stage. I am, therefore, of opinion that the draft, as it is, should be published now with a note as to how it has been prepared and by whom and that is being scrutinized by the Drafting Committee and if any changes or modifications are made by it, those changes will also be made public later on.

I shall be obliged if the Drafting Committee will let me know its own opinion on the matter. I shall be obliged for an early reply as I propose to take action as soon as possible.

October 28, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalaswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Shri D. P. Khaitan; (6) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri Jugal Kishore Khanna, Deputy Secretary; (3) Shri P. N. Krishna Mani, Assistant Secretary.

1. The committee considered the minutes of the meeting of the committee held on the 27th October, 1947, and made therein the changes specified in Annexure 'A'.

2. The committee then resumed consideration of the Draft Constitution. The redraft of clause 1 as shown in the minutes of the meeting held on the 27th October, 1947, was further considered. It was decided that Part I of the Draft Constitution containing clauses 1, 2 and 3 should be revised as shown in Annexure 'B'.

3. The consideration of Part II of the Draft Constitution was then taken up by the committee. Shri Munshi proposed to circulate a redraft of clause 5 to the members of the committee. Discussion on this clause was not concluded when the committee adjourned till 10.30 A.M. on the 29th October, 1947.

ANNEXURE A

(1) In paragraph 2 of the minutes, in sub-paragraph (1):

(a) after the words "or any order", *insert* the words "rule, regulation or other instrument";

(b) for the words "by the said Act", *substitute* the words "under the said Act";

(2) in sub-paragraph (2), for sub-rules (1) and (2) of the new rule 38-R proposed, *substitute* the following, namely:

(1) When a motion that the Constitution be taken into consideration has been carried and all amendments to the Constitution moved have been considered, any member may move that the Constitution be passed :

Provided that the President may, before allowing the motion to be moved, refer the Constitution as amended to the Drafting Committee referred to under sub-rule (1) of rule 38-L with instructions to carry out such renumbering of the clauses and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential amendments to the Constitution as may be required.

(2) When the Constitution has been so referred to the Drafting Committee and the committee has presented its report, any member may move that the Constitution as revised by the committee be passed:

(3) in clause (a) of sub-paragraph (3), for the new proviso proposed for addition to sub-rule (2) of rule 38-S, *substitute* the following, namely :

Provided that the President may, before allowing the motion to be moved, refer the Bill as amended to a committee consisting of the members of the Assembly appointed by him with instructions to carry out such renumbering of the clauses and such revision and completion of the marginal notes thereof as may be necessary and to recommend such formal or consequential amendments to the Bill as may be required;

(4) in sub-paragraph (4), for the new rules 38-U and 38-V, proposed for substitution for the existing rule 38-U, *substitute* the following, namely :

38-U. When the Constitution is passed by the Assembly it shall be submitted to the President and shall be authenticated by the President by affixing his signature thereto.

38-V. When a Bill referred to in rule 38-A is passed by the Assembly, a copy of the Bill signed by the President shall be submitted to the Governor-General for his assent, and, if assented to by him, it shall be published in the Gazette of India as an Act passed by the Constituent Assembly and assented to by the Governor-General.

ANNEXURE B

For Part I of the Draft Constitution *substitute* the following, namely:

PART I—THE UNION AND ITS TERRITORY AND JURISDICTION

1. (1) As from the date of commencement of this Constitution 'India' shall be a Union of States.

(2) The States shall mean—

(a) the States specified in Part I of the First Schedule to this Constitution,

(b) the States specified in Part II of the said Schedule, and

(c) the States specified in Part III of the said Schedule,

and shall include such other States as may hereafter be admitted into the Union or established by the Parliament.

(3) The territories of India shall comprise—

(a) the territories of each of the States referred to in sub-section (2),

(b) the territories specified in Part IV of the First Schedule to this Constitution, and

(c) such other territories as may be acquired.

2. The Parliament may, from time to time, by Act, admit into the Union, or establish, new States on such terms and conditions as it thinks fit and may by such Act make such incidental and consequential changes in the First Schedule to, and in any other provisions of, this Constitution as it may deem necessary or proper.

3. (1) The Parliament may, by Act—

(a) create a new State;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of the Parliament unless the views of the Government and the House or Houses of the legislature of any State which will be affected by the Bill, both with respect to the proposal to introduce the Bill and with respect to the provisions to be inserted therein have been ascertained, and such views have been laid before the House of the Parliament at the time of the introduction of such Bill:

Provided further that no such Bill shall be introduced in either House of the Parliament if it affects any State specified in Part III of the First Schedule to this constitution either with respect to the proposal to make the Bill or with respect to the provisions to be inserted therein, without the previous consent of the Government and the House or Houses of the Legislature, if any, of such State.

(2) The Parliament may by such Act make such incidental and consequential changes in the First Schedule to, and in any other provisions of, this Constitution, and may make such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other incidental and consequential provisions as it may deem necessary or proper:

Provided that no such Act shall vary the total membership of either House of the Parliament.

October 29, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Shri D. P. Khaitan; (6) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri Jugal Kishore Khanna, Deputy Secretary; (3) Shri P. N. Krishna Mani, Assistant Secretary.

1. The committee considered the minutes of the meeting held on the 28th October, 1947, and made further changes as specified in Appendix A in the Draft Rules which it is proposed to make for regulating the procedure to be followed in the Constituent Assembly for the passing of the Draft Constitution and Bills for amendment of the existing constitution.

2. The committee then resumed consideration of the Draft Constitution. The redraft of Part I of the Draft Constitution containing clauses 1, 2 and 3 was further considered. Clauses 1 and 2 were approved in the form shown in Appendix B. It was proposed that clause 3 should be revised in the form shown in the said Appendix. The redraft of this clause will be further considered at the next meeting of the committee. The committee decided that the First Schedule to the Draft Constitution should be revised as shown in the said Appendix.

3. Further consideration of Part II of the Draft Constitution was then taken up by the committee. Shri Munshi suggested a revised draft of clause 5. Discussion on this clause was not concluded when the committee adjourned till 10.30 A.M. on the 30th October, 1947.

APPENDIX A

1. In the new proviso proposed for addition to sub-rule (2) of rule 38-S, for the words "to a committee" *substitute* the words "either to the Drafting Committee referred to in sub-rule (1) of rule 38-L or to another *ad hoc* committee".

2. In sub-rule (4) of rule 38-S, for the words "referred to a committee" *substitute* the words "so referred to the Drafting Committee or the committee".

3. For rules 38-U and 38-V, *substitute* the following:

38-U. When the Constitution is passed by the Assembly, it shall be submitted to the President who shall authenticate the same by affixing his signature thereto.

38-V. When a Bill referred to in rule 38-A is passed by the Assembly, a copy thereof signed by the President shall be submitted to the Governor-General for his assent. When the Bill is assented to by the Governor-General, it shall become an Act and shall be published in the Gazette of India.

APPENDIX B

1. For Part I of the Draft Constitution *substitute* the following, namely:

PART I—THE UNION AND ITS TERRITORY AND JURISDICTION

1. (1) *[As from the date of commencement of this Constitution] India shall be a Union of States.

(2) The States shall mean—

(a) the States specified in Part I of the First Schedule to this Constitution,

(b) the States specified in Part II of the said Schedule, and

(c) the States specified in Part III of the said Schedule,

and shall include such other States as may hereafter be admitted into the Union or established by the Parliament.

(3) The territory of India shall comprise—

(a) the territories of each of the States referred to in sub-section (2),

(b) the territories specified in Part IV of the First Schedule to this Constitution, and

(c) such other territories as may be acquired.

2. (1) The Parliament may, from time to time, by Act, admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

(2) Every such Act shall contain such provisions as may be necessary for the amendment of the First Schedule to this Constitution for inclusion of such States therein and may also contain provisions for such incidental and consequential amendments to this Constitution as the Parliament may deem necessary.

3. (1) The Parliament may by Act—

(a) form a new State by separation of territory from a State or by uniting two or more States or parts of States;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State;

Provided that no Bill for the purpose shall be introduced in either House of Parliament except by Government and unless—

(a) the majority of the representatives of the areas proposed to be included in or excluded from any State by the Bill, or of the areas affected by the proposal contained in the Bill, in the legislature for the State of which such areas form part have made representation in writing to the President to give effect to such proposal,

(b) the views of the legislature of any State, other than a State specified in Part III of the First Schedule, which will be affected by the Bill both with respect to the proposal to introduce the Bill and with respect to the provisions to be inserted therein have been ascertained by the President and such views have been laid before the House of Parliament in which the Bill is introduced at the time of such introduction, and

(c) where the Bill either with respect to the proposal to introduce the Bill or with respect to the provisions to be inserted therein affects any State specified in Part III of the First Schedule, the previous consent of the legislature of such State to the introduction of such Bill has been obtained.

(2) Every Act referred to in sub-section (1) shall contain such provisions for the amendment of the First Schedule to this Constitution as may be necessary to give effect to the provisions of that Act and the Parliament may, by such Act, also make such incidental and consequential amendments to this Constitution and such

*[] The portion enclosed within brackets has not finally been approved by the committee and is subject to further revision.

provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other incidental and consequential provisions as it may deem necessary:

Provided that no such Act shall vary the total membership of either House of Parliament.

II. For the First Schedule to the Draft Constitution *substitute* the following, namely:

FIRST SCHEDULE
[Sections 2 and 3]

The States and the territories of India

PART I

The Provinces known as—

- (1) Madras,
- (2) Bombay,
- (3) West Bengal,
- (4) The United Provinces,
- (5) Bihar,
- (6) East Punjab,
- (7) The Central Provinces and Berar,
- (8) Assam,
- (9) Orissa.

PART II

The Provinces known as—

- (1) Delhi,
- (2) Ajmer-Merwara including Panth Piploda.
- (3) Coorg.

PART III

The following Indian States—

- (1)
 - (2)
- etc.

Groups of States

- (1)
 - (2)
- etc.

PART IV

The Andaman and Nicobar Islands.

October 30, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri Jugal Kishore Khanna, Deputy Secretary; (3) Shri P. N. Krishna Mani, Assistant Secretary.

1. The committee considered the minutes of the meeting held on the 29th October, 1947. Appendix A to those minutes was approved. Clause 1 of Part I of the Draft Constitution as shown in Appendix B to those minutes was also approved, and clause 2 in the said Part was approved subject to the substitution of the word "law" for the word "Act" wherever it occurs in that clause.

The committee further considered the redraft of clause 3 of the Draft Constitution as contained in Appendix B and was of opinion that the said clause should be revised in the form shown in the Appendix to these minutes. The committee approved the draft of the First Schedule as contained in Appendix B subject to the omission of the heading "Groups of States" from Part III of that Schedule.

2. The committee then resumed consideration of the Draft Constitution.

Clause 4 : It was decided to omit this clause.

Clause 5 : Further consideration of this clause was postponed.

Clause 6 : It was decided that this clause should be omitted, and that citizenship after the commencement of the constitution should be regulated by law.

Clause 6-A : The committee was of opinion that this clause should be transferred to the relevant parts of the constitution dealing with disqualifications for membership of the legislatures.

Clause 7 : The committee decided that this clause should be revised as shown in the Appendix.

Part III : It was decided that the Directive Principles of State policy should be transferred from this Part and included in a new Part.

Clause 8 : It was decided that the definition of "Federal law" should be omitted from this clause. The committee suggested certain consequential changes in the definition of "the State" in this clause, as shown in the Appendix.

Clause 9 : It was decided that this clause should be revised as shown in the Appendix.

Clause 10 : The committee was of opinion that this clause should be transferred to the new Part containing the Directive Principles of State policy.

Clause 11 : No change was made in this clause by the committee.

Clause 12 : This clause will be further considered by the committee at its next meeting.

Clauses 13 and 14: It was decided that these two clauses should be revised in the form shown in the Appendix.

3. The committee then adjourned till 10.30 A.M. on the 31st October, 1947.

APPENDIX

3. (1) The Parliament may by law—

- (a) form a new State by separation of territory from a State or by uniting two or more States or parts of States;
- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except by Government and unless—

(a) a representation in writing in that behalf has been made to the President—

(i) by a majority of the representatives of the area proposed to be included in or excluded from any State in the Legislature for the State of which such area forms part, or

(ii) by the Legislature for the State which will be affected by the proposal to be contained in the Bill; and

(b) where the proposal contained in the Bill affects any State, other than a State specified in Part III of the First Schedule, the views of the Legislature of such State both with respect to the proposal to introduce the Bill and with respect to the provisions to be inserted therein have been ascertained by the President and such views have been laid before the House of the Parliament in which the Bill is introduced at the time of such introduction, and where such proposal affects any State specified in Part III of the First Schedule, the previous consent of the Legislature of such State to the introduction of the Bill has been obtained.

(2) Any law referred to in sub-section (1) shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and Parliament may, by such law, also make such incidental and consequential amendments to this Constitution and such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other incidental and consequential provisions as it may deem necessary.

PART II—CITIZENSHIP

4. [Omitted.]

5. [Held over.]

6. [Omitted.]

6-A. [To be transferred to the relevant Parts dealing with disqualifications for membership of legislatures.]

7. The Parliament may, by law, make further provision regarding the acquisition and termination of citizenship and all other matters relating thereto.

PART III—FUNDAMENTAL RIGHTS

8. In this Part, unless the context otherwise requires, 'the State' includes the

Government and Parliament and the Government and the Legislature of each of the States and all local or other authorities within the territory of India.

9. (1) All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with any of the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this sub-section shall, to the extent of the contravention, be void.

(3) In this section, the expression 'law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof.

10. [To be transferred to the Part dealing with the Directive Principles of State policy.]

Rights of equality

11. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.

In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment, or

(b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of the revenues of the State or dedicated to the use of the general public.

(2) Nothing in this section shall prevent the State from making any special provisions for women and children.

12. [Held over.]

13. The custom of 'untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence which shall be punishable in accordance with law.

14. (1) No title shall be conferred by the State:

Provided that nothing in this sub-section shall affect the right to confer titles exercisable before the commencement of this Constitution by the Ruler of any State specified in Part III of the First Schedule.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State.

October 31, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopala-swami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri Jugal Kishore Khanna, Deputy Secretary; (3) Shri P. N. Krishna Mani, Assistant Secretary.

The committee considered the minutes of the meeting held on the 30th October, 1947 and made the changes shown in Appendix A to these minutes.

2. The committee then resumed consideration of the Draft Constitution.

Clause 12: This clause was approved subject to the substitution of the words "backward class" for the words "particular classes" in sub-clause (3) thereof.

Clause 15: It was decided that sub-clause (1) of this clause should be revised in the form shown in Appendix B to these minutes.

The consideration of sub-clause (2) of this clause was postponed till the provisions relating to declaration of emergencies by the Government of India and the Governments of the States specified in Parts I, II and in Part III of the First Schedule to the Draft Constitution have been considered and settled.

The committee was of opinion that sub-clause (3) of this clause should provide exception only in the case of laws imposing restrictions on the exercise of any of the rights conferred by clauses (d), (e), (f) and (g) of sub-clause (1) of this clause as revised, where public interest so requires for promotion of the interests of any tribes to be specified in such law, and that the reference to minorities should be omitted from sub-clause (3).

Clause 16: The committee was of opinion that the word "personal" before the word "liberty" should be retained in this clause, as the word "liberty" by itself might be construed very widely. Mr. Munshi, however, did not agree to this view. As the word "personal" was not in the original clause of fundamental rights as adopted by the Constituent Assembly, it was decided that the reason for its present addition should be explained in the committee's report. The committee was also of opinion that after the words "equality before the law" the words "or equal protection of the laws" should be inserted. This clause as revised by the committee is shown in Appendix B.

3. The committee then adjourned till 10.30 A.M. on the 1st November, 1947.

APPENDIX A

1. For clause 13, *substitute* the following:

13. 'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence which shall be punishable in accordance with law.

2. For clause 14, *substitute* the following:

14. (1) No title shall be conferred by the State:

Provided that nothing in this sub-section shall affect the right of the Ruler of any State specified in Part III of the First Schedule to confer titles on the citizens domiciled within the territories of, or serving under, such State if he had any such right before the commencement of this Constitution.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State.

APPENDIX B

RIGHTS OF FREEDOM

15. (1) Subject to public order, *health and morality, every citizen shall have the right—

(a) to freedom of speech and expression;

*[Provided that the publication or utterances of seditious, slanderous, libellous or defamatory matter shall be actionable or punishable in accordance with law:]

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(f) to acquire, hold and dispose of property; and

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) [Held over.]

*[(3) Nothing in this section shall prevent the State from making any law imposing restrictions on the exercise of any of the rights conferred by clauses (d), (e), (f) and (g) of sub-section (1) if public interest so requires for the promotion of the interests of any tribes specified in such law.]

*[(4) Nothing in clause (g) of sub-section (1) shall affect the operation of any law prescribing or empowering any authority to prescribe the professional or technical qualifications which are to be requisite for the practising of any profession, or the carrying on of any occupation, trade or business.]

16. No person shall be deprived of his life or *personal liberty without due process of law, nor shall any person be denied equality before the law* [or the equal protection of the laws] within the territory of India.

November 1, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishna-swami Ayyar; (3) Shri K. M. Munshi; (4) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri Jugal Kishore Khanna, Deputy Secretary; (3) Shri P. N. Krishna Mani, Assistant Secretary.

The committee considered the minutes of the meeting held on the 31st October, 1947.

In the new clause 13 in Appendix A to those minutes the words "which shall be" were considered by the committee to be unnecessary and were omitted.

Clause 15 in Appendix B to those minutes was further revised by the committee and the clause as revised by the committee is shown in Appendix A to these minutes.

2. The committee then resumed consideration of the Draft Constitution.

*These portions will be printed in thick type at the time of final printing of the Draft Constitution.

Clause 17 : The committee was of opinion that the first and second provisos to this clause should be transferred as independent clauses in the chapter dealing with relations between the different States and that the third proviso was unnecessary in view of the opening words "Subject to the provisions of any Federal law" in this clause. It was decided that this clause should be revised in the form as shown in Appendix B to these minutes.

Clause 18 : It was decided that this clause should be revised as shown in Appendix B.

Clause 19 : No change was made in this clause.

Clause 20 : It was decided that this clause should be revised as shown in Appendix B.

Clauses 21 and 22 : No change was made in these two clauses.

Clause 23 : The consideration of this clause was held over pending the report of the sub-committee appointed by the Hon'ble President for the consideration of the clause.

Clause 24 : This clause was revised in the form shown in Appendix B.

Clause 25 : No change was made in this clause, but the committee was of opinion that this clause should be placed under a new sub-heading "Rights to Property" and that sub-heading "Miscellaneous Rights" should be transferred before clause 26 as shown in Appendix B.

Clause 26 : No change was made in sub-clause (1) of this clause.

The committee was of opinion that the intention was that any person accused of any offence should not be compelled to be a witness against himself and that the words "save as provided in section 132 of the Indian Evidence Act, 1872 as in force at the commencement of this Constitution" would not be necessary if this intention was made clear.

Sub-clause (2) of this clause was split up into two sub-clauses and revised accordingly.

Clause 26 as revised by the committee is shown in Appendix B.

Clause 27 : The committee was of opinion that this clause should be transferred to the chapter dealing with relations between the different States.

Clause 28 : It was decided that clause 28 should be revised in the form shown in Appendix B.

Clause 29 : The committee did not make any change in this clause.

Clause 30 : It was decided that this clause should be revised in the form shown in Appendix B.

Chapter III : The committee was of opinion that this chapter containing Directive Principles of State policy should be transferred to a new Part, namely, Part IIIA, and that before clause 31 therein a new clause 30-A (as shown in Appendix B) containing the definition of "the State" and another new clause 30-B (as shown in Appendix B) containing the provisions of clause 10 of the Draft Constitution should be inserted.

Clause 31 : The committee was of opinion that the words "whole people"

in this clause should be replaced by the word "people". This clause as so revised is shown in Appendix B.

Clause 32 : The committee was of opinion that sub-clause (iii) of this clause should be revised and this clause as revised is shown in Appendix B.

3. The committee then adjourned till 10.30 A.M. on Monday, the 3rd November, 1947.

APPENDIX A

RIGHTS OF FREEDOM

15. (1) Subject to public order, morality and health, every citizen shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) [Held over.]

(3) Nothing in clause (a) of sub-section (1) shall prevent the State from making any law declaring the publication or utterances of seditious, slanderous, libellous or defamatory matter to be actionable or punishable.

(4) Nothing in this section shall prevent the State from making any law imposing restrictions on the exercise of any of the rights conferred by clauses (d), (e), (f), and (g) of sub-section (1) if the imposition of such restrictions is deemed necessary for the protection of the interests of any tribes specified in such law.

(5) Nothing in clause (g) of sub-section (1) shall prevent the State from making any law prescribing or empowering any authority to prescribe the professional or technical qualifications which are to be requisite for the practising of any profession or the carrying on of any occupation, trade or business.

APPENDIX B

17. Subject to the provisions of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free.

18. (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this section shall prevent the State from imposing compulsory service for public purposes. In imposing such service the State shall not make any discrimination on the ground of race, religion, caste or class.

19. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

RIGHTS RELATING TO RELIGION

20. (1) Subject to public order, morality and health and to the other provisions

of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Explanation: The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

(2) Nothing in this section shall preclude the State from making any law—

- (a) regulating or restricting any economic, financial, political or other secular activities which may be associated with religious practice ;
- (b) for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

21. Every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion and, in accordance with the provisions of law, to own, acquire and administer property, movable or immovable, and to establish and maintain institutions for religious or charitable purposes.

22. No person may be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

23. [Held over.]

CULTURAL AND EDUCATIONAL RIGHTS

24. (1) A minority possessing a distinct language, script and culture shall have the right to maintain its language, script and culture.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.

(3) (a) All minorities whether based on religion, community or language shall have the right to establish and administer educational institutions of their choice.

(b) The State shall not, in granting aid to schools, discriminate against schools which are under the management of minorities whether based on religion, community or language.

RIGHTS TO PROPERTY

25. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined.

MISCELLANEOUS RIGHTS

26. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence.

(2) No person shall be punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

27. [To be transferred to the chapter dealing with relations between the States.]

RIGHTS TO CONSTITUTIONAL REMEDIES

28. (1) The right to move the Supreme Court or any other court by appropriate proceedings for the enforcement of the rights provided for in this Part is guaranteed.

(2) Without prejudice to the powers that may for the time being be vested in this behalf in other courts, the Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights provided for in this Part.

(3) Such right shall not be suspended except as otherwise provided in section ...of this Constitution.

29. The Parliament may by law determine to what extent any of the rights guaranteed in this Part shall in their application to the members of the armed forces or the forces charged with the maintenance of public order be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

30. Notwithstanding anything elsewhere, contained in this Constitution, the Parliament shall have, and the Legislature of a State shall not have, power to make laws—

(a) with respect to any of the matters which under this Part are required to be provided for by legislation, and

(b) for prescribing punishment for those acts which are declared to be offences under this Part;

and the Parliament shall, as soon as may be after the commencement of this Constitution, make laws to provide for such matters and for prescribing punishment for such acts.

PART III-A—DIRECTIVE PRINCIPLES OF STATE POLICY

30-A. In this Part, unless the context otherwise requires, “the State” has the same meaning as in Part III of this Constitution.

30-B. The principles of policy set forth in this Part are intended for the guidance of the State. While these principles are not cognizable by any court, they are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

31. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

32. The State shall, in particular, direct its policy towards securing—

(i) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(iv) that there is equal pay for equal work for both men and women;

(v) that the strength and health of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

November 3, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Shri K. M. Munshi; (4) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri Jugal Kishore Khanna, Deputy Secretary; (3) Shri P. N. Krishna Mani, Assistant Secretary.

1. The committee first considered the minutes of the meeting held on the 1st November, 1947.

In sub-clause (4) of the new clause 15 in Appendix A to those minutes, the words "specified in such law" were omitted and sub-clause (5) of that clause was further revised as follows:

(5) Nothing in clause (g) of sub-section (1) shall prevent the State from making any law prescribing or empowering any authority to prescribe such professional or technical qualifications as are necessary for practising any profession or carrying on any occupation, trade or business.

In paragraph (a) of sub-clause (2) of clause 20 in Appendix B to those minutes, the word "activities" was replaced by the word "activity".

Clauses 24, 28 and 30 in Appendix B to those minutes were further revised as shown in Appendix A to these minutes.

The committee was of opinion that the heading "Miscellaneous Rights" above clause 26 should be omitted and clause 26 should be inserted as clause 15-A after clause 15.

The committee was further of opinion that the word "the" before the word "Parliament" in clause 29 should be omitted.

2. It was pointed out by the Joint Secretary to the committee that the use of the expression "Nothing in... shall prevent the State from making any laws" in sub-clauses (3), (4) and (5) of clause 15 will not save the operation of existing laws which were inconsistent with the provisions of sub-clause (1) of that clause in view of clause 9 (1) of the Draft Constitution. The committee expressed the view that sub-clauses (3), (4) and (5) might be left in the form in which it was revised and clause 9 should be revised as shown in Appendix B.

3. The committee then resumed consideration of the Draft Constitution.

Clauses 33-35 : No change was made in these clauses.

Clause 36 : The committee was of opinion that the words "throughout the territory of India" should be added to this clause.

Clauses 37-39 : No change was made in these clauses.

Clause 40 : A few drafting changes were made in this clause and the clause as revised is shown in Appendix C.

Clause 41 : No change was made in this clause.

Clause 42 : This clause was revised as shown in Appendix C.

It was decided that the provisions of sub-clause (1) and paragraph (a)

of sub-clause (2) of clause 53 should be transferred after clause 42 as new clause 42-A.

Clause 43: It was decided that this clause should be revised and split up into two clauses 43 and 43-A as shown in Appendix C.

Clause 44: In clauses (a), (b) and (c) of the proviso to this clause the words "a President" should be replaced by the words "the President".

Clause 45: No change was made in this clause.

Clauses 46 and 47: A few drafting alterations were made in these two clauses and these clauses as revised are shown in Appendix C.

Clause 48: The committee was of opinion that it would be sufficient if the declaration referred to in this clause is made in the presence of the Chief Justice of India. This clause as revised by the committee is shown in Appendix C.

Clause 49: It was decided that this clause should be revised as shown in Appendix C.

3. The committee then adjourned till 10.30 A.M. on Tuesday, the 4th November, 1947.

APPENDIX A

CULTURAL AND EDUCATIONAL RIGHTS

24. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.

(3) (a) All minorities whether based on religion, community or language shall have the right to establish and administer educational institutions of their choice.

(b) The State shall not, in granting aid to schools, discriminate against any school on the ground that it is under the management of a minority, whether based on religion, community or language.

RIGHT TO CONSTITUTIONAL REMEDIES

28. (1) The right to move the Supreme Court or any other court by appropriate proceedings for the enforcement of the rights provided for in this Part is guaranteed.

(2) Without prejudice to the powers that may for the time being be vested in this behalf in other courts, the Supreme Court and the High Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights provided for in this Part.

(3) Such rights shall not be suspended except as otherwise provided for by this Constitution.

Explanation: In this section, the reference to a High Court shall be construed as including a reference to a court in a State specified in Part III of the First

Schedule which is a High Court for any of the purposes of Chapter IV of Part IV of this Constitution.

30. Notwithstanding anything elsewhere contained in this Constitution, Parliament shall have, and the legislature of a State shall not have, power to make laws—

(a) with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament, and

(b) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws to provide for such matters and for prescribing punishment for such acts:

Provided that any law in force in the territory of India or in any part thereof with respect to any of the matters referred to in clause (a) of this section or providing for punishment for any act which is declared to be an offence under this Part shall continue in force therein until altered or repealed or amended by Parliament or other competent authority.

APPENDIX B

9. (1) All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with any of the provisions of this Part, shall, to the extent of such inconsistency, be void:

Provided that nothing in this sub-section shall affect the operation of any law which relates to a matter with respect to which the State is not precluded from making law under the provisions of this Part.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this sub-section shall, to the extent of the contravention, be void.

(3) In this section, the expression 'law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof.

APPENDIX C

35. The State shall endeavour to secure, by suitable legislation or economic make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement, and other cases of undeserved want.

34. The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

35. The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

36. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

37. Every citizen is entitled to free primary education, and it shall be the duty of the State to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory primary education for all children until they complete the age of fourteen years.

38. The State shall promote with special care the educational and economic interests of the weaker sections of people, and, in particular, of the Scheduled Castes

and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

39. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

40. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to law made by Parliament all such monuments or places or objects.

41. The State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organized people with one another.

PART IV

Chapter I—The Executive

The President

42. There shall be a President (*Rashtrapati*) of India.

42-A. (1) Subject to the provisions of this Constitution, the executive authority of India shall be vested in the President and may be exercised by him either directly or through persons acting under his authority.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of India shall be vested in the President.

43. The President shall be elected by the members of an electoral college consisting of—

(a) the elected members of both Houses of Parliament, and

(b) the elected members of the Legislatures of the States.

43-A. (1) There shall be uniformity in the scale of representation of the different States at the election of the President.

(2) For the purpose of securing such uniformity the number of votes which each elected member of Parliament and of the Legislature of each State is entitled to cast at such election shall be determined in the following manner, that is to say:

(a) every elected member of the Legislature of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the Legislature;

(b) if, after taking the multiples of one thousand in making calculation for the purpose of clause (a), the remainder is not less than five hundred, then the vote of each member referred to in that clause shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislatures of the States under clauses (a) and (b) by the total number of such members, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation: In this section, the expression "the Legislature of a State" means,

where the Legislature is bicameral, the Lower House of the Legislature, and the expression "population" means the population as ascertained at the last preceding decennial census.

44. The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

- (a) the President may, by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People, resign his office;
- (b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in section 49;
- (c) the President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

45. A person who holds, or who has held, office as President shall be eligible for re-election to that office once, but only once.

46. (1) No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office or position of emolument under the Government of India or the Government of any State or under any local or other authority subject to the control of either Government.

47. (1) The President shall not be a member either of Parliament or of the Legislature of any State, and if a member of Parliament or of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as President.

(2) The President shall not hold any other office or position of emolument.

(3) The President shall have an official residence and there shall be paid to the President such emoluments and allowances as may be determined by Parliament by law and until provision in that behalf is so made, the President shall receive such emoluments and allowances as are specified in the Second Schedule to this Constitution.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

48. Every President and every person acting as President shall enter upon his office after making and subscribing in the presence of the Chief Justice of India a declaration according to the form set out in that behalf in the Third Schedule to this Constitution.

49. (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

(2) No such charge shall be preferred unless—

- (a) the proposal to prefer such charge is contained in a resolution which has been moved after a notice in writing signed by not less than thirty members of the House has been given of their intention to move the resolution, and
- (b) such resolution has been supported by not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed, supported by not less

than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

November 4, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalaswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Maulavi Saiyid Muhammad Saaddulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri Jugal Kishore Khanna, Deputy Secretary; (3) Shri P. N. Krishna Mani, Assistant Secretary.

1. The committee first considered the minutes of the meeting held on the 3rd November, 1947, and approved them subject to the following modifications:

(1) The committee accepted the suggestion of Shri Alladi Krishnaswami Ayyar that sub-clause (3) of clause 15 of the Draft Constitution should be so worded that the operation of the existing law relating to libel, slander, defamation or sedition may not be affected by paragraph (a) of sub-clause (1) of that clause. The committee was of opinion that sub-clauses (4) and (5) to that clause should be also revised to save the operation of existing laws. It was accordingly decided that clause 15 should be revised as shown in Appendix A to these minutes.

(2) The committee was of opinion that in view of the further modifications suggested in sub-clauses (3), (4) and (5) of clause 15, it was not necessary to add any proviso to sub-clause (1) of clause 9 as shown in Appendix B to the said minutes. It was decided that clause 9 should stand as previously approved by the committee.

(3) Clause 28 in Appendix A to the said minutes was further revised as shown in Appendix A to these minutes.

(4) The committee approved the revised draft of clause 30 in Appendix A to the said minutes. Shri Alladi Krishnaswami Ayyar did not, however, agree to the changes made in this clause by the committee and was of opinion that the powers of the Legislature of a State to make laws should not be taken away by this clause as criminal law being a concurrent subject, any law made by Parliament would prevail over the laws made by the Legislature of a State in so far as they are repugnant to the law made by Parliament.

(5) It was decided that in the heading of Chapter I of Part IV as shown in Appendix C, for the words "The Executive" the words "The Central Executive" should be substituted.

(6) Clauses 42-A and 43 were further revised by the committee as shown in Appendix A to these minutes,

(7) The committee was of opinion that clause 46 should be further revised as shown in Appendix A to these minutes.

(8) It was decided that the form in which the declaration is to be made by the President should be appended to clause 48 instead of being set out in the Third Schedule to the Constitution. Clause 48 was accordingly revised as shown in Appendix A to these minutes.

2. The committee then resumed consideration of the Draft Constitution.

Clause 50 : Sub-clause (1) of this clause was slightly revised by the committee. This clause as revised by the committee is shown in Appendix B.

Clause 51 : It was decided that this clause should be revised and split up into five clauses, namely, 51, 51-A, 51-B, 51-C, and 51-D as shown in Appendix B.

Clause 52 : No change was made in this clause.

3. The committee then adjourned till 10.30 A.M. on the 5th November, 1947.

APPENDIX A

RIGHTS OF FREEDOM

15. (1) Subject to public order, morality and health, every citizen shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) [Held over.]

(3) Nothing in clause (a) of sub-section (1) shall affect the operation of any law relating to libel, slander, defamation or sedition, nor shall prevent the State from making any law with respect thereto.

(4) Nothing in this section shall affect the operation of any law imposing restrictions on the exercise of any of the rights conferred by clauses (d), (e), (f) and (g) of sub-section (1) for the protection of the interests of any tribe nor shall prevent the State from making any law imposing such restrictions for such purposes.

(5) Nothing in clause (g) of sub-section (1) shall affect the operation of any law prescribing or empowering any authority to prescribe the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business nor shall prevent the State from making any such law.

RIGHT TO CONSTITUTIONAL REMEDIES

28. (1) The right to move the Supreme Court or any other court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) Without prejudice to the powers that may for the time being be vested in this behalf in other courts, the Supreme Court and the High Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*,

prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) The rights guaranteed by this section shall not be suspended except as otherwise provided for by this Constitution.

Explanation : In this section, the reference to a High Court shall be construed as including a reference to a court in a State specified in Part III of the First Schedule which is declared to be a High Court under section 105 in Chapter IV of Part IV of this Constitution for any of the purposes of that chapter.

PART IV

Chapter I—The Central Executive The President

42. There shall be a President (*Rashtrapati*) of India.

42-A. (1) The executive power of India shall be vested in the President and may be exercised by him in accordance with this Constitution and the law.

(2) The supreme command of the Defence Forces of India shall be vested in the President. The exercise of such supreme command shall be regulated by law.

43. The President shall be elected by the members of an electoral college consisting of—

- (a) the members of both Houses of Parliament, and
- (b) the elected members of the Legislatures of the States.

46. (1) No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office or position of emolument under the Government of India or the Government of any State or under any local or other authority subject to the control of either Government.

Explanation : For the purposes of this section a person shall not be deemed to hold any office or position of emolument by reason only that—

- (a) he is a Minister either for India or for any State specified in Parts I and II of the First Schedule; or
- (b) he is a Minister for any State specified in Part III of the First Schedule, if he is not in regular employment of the State.

48. Every President and every person acting as President shall enter upon his office after making and subscribing in the presence of the Chief Justice of India an affirmation or oath in the following form, that is to say—

“I, A.B., do solemnly affirm (or swear) that I will faithfully execute the office of the President of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote my abilities to the service and well-being of the people of India.”

APPENDIX B

50. (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

(2) An election to fill a vacancy occurring by reason of the death, resignation or removal of a President shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall be entitled to hold office for the full term of five years as provided in section 44.

THE VICE-PRESIDENT

51. There shall be a Vice-President of India.

51-A. The Vice-President shall be *ex-officio* Chairman of the Council of States and shall not hold any other office or position of emolument :

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under section 51-B, he shall not perform the duties of the office of the Chairman of the Council of States and the said office shall during such period be deemed to be vacant.

51-B. (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

51-C. (1) The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member either of Parliament or of the Legislature of any State, and if a member of Parliament or of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office or position of emolument under the Government of India or the Government of any State or under any local or other authority subject to the control of either Government.

Explanation : For the purposes of this section, a person shall not be deemed to hold any office or position of emolument by reason only that—

- (a) he is a Minister either for India or for any State specified in Parts I and II of the First Schedule; or
- (b) he is a Minister for any State specified in Part III of the First Schedule, if he is not in regular employment of the State.

(5) An election to fill the vacancy caused by the expiration of the term of office of a Vice-President shall be completed before the expiration of the term.

(6) An election to fill a vacancy occurring by reason of the death, resignation or removal of a Vice-President shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill such vacancy shall be entitled to hold office for the full term of five years as provided in section 51-D.

51-D. The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

- (a) a Vice-President may, by writing under his hand addressed to the President, resign his office;
- (b) a Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for

- the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;
- (c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

November 5, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri P. N. Krishna Mani, Assistant Secretary.

1. The committee first considered the minutes of the meeting held on the 4th November, 1947, and approved them subject to the following modifications :

(1) Sub-clauses (3), (4) and (5) of clause 15 in Appendix A to those minutes were further revised. The clause as revised by the committee is shown in Appendix A to these minutes.

(2) The committee was of opinion that paragraph (b) of the Explanation to clause 46 and of the Explanation to sub-clause (4) of clause 51-C in Appendix A to the said minutes would require revision. Further consideration of these two paragraphs will be taken up at the next meeting.

(3) Clause 48 in Appendix A to the said minutes was further revised as shown in Appendix A to these minutes.

(4) The committee discussed whether any provision for impeachment of the Vice-President for violation of the Constitution during the period the Vice-President would discharge the functions of the President on the lines of the provisions relating to the impeachment of the President should be inserted or the existing provision in paragraph (b) of the proviso to clause 51-D in Appendix A to the said minutes would suffice. No decision was reached and further consideration of the matter was postponed till the next meeting.

2. The committee then considered if any provision relating to immunity of the President and of the Governor of a Province from civil and criminal processes should be included in the Constitution. After discussion the further consideration of this matter was also postponed till the next meeting.

3. The committee then resumed consideration of the Draft Constitution :

Clause 53 : It was decided that paragraphs (b) and (c) of sub-clause (2) of this clause should be revised and included in a new clause 53-A as shown in Appendix B to these minutes.

4. The committee then adjourned till 10.30 A.M. on the 6th November, 1947.

APPENDIX A

RIGHTS OF FREEDOM

15. (1) Subject to public order, morality and health, every citizen shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) [Held over.]

(3) Nothing in clause (a) of sub-section (1) shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation or sedition.

(4) Nothing in this section shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by clauses (d), (e), (f) and (g) of sub-section (1) for the protection of the interests of any tribe.

(5) Nothing in clause (g) of sub-section (1) shall affect the operation of any existing law, or prevent the State from making any law, prescribing or empowering any authority to prescribe the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

48. Every President and every person acting as President or discharging the functions of the President shall before entering upon his office make and subscribe in the presence of the Chief Justice of India an affirmation or oath in the following form, that is to say,—

"I, A.B., do solemnly affirm (or swear) that I will faithfully execute the office of President (or discharge the functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India."

APPENDIX B

53-A. The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

- (a) in all cases where the punishment or sentence is by a Court Martial;
- (b) in cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws;
- (c) in cases where the sentence is a sentence of death;

Provided that nothing in this section shall take away the power of any office of the armed forces of India to suspend, remit or commute a sentence passed by Court Martial:

Provided further that nothing in clause (c) shall extend the power of the President thereunder to offences committed within States specified in Part III of the First Schedule.

November 6, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopala-swami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri P. N. Krishna Mani, Assistant Secretary.

1. The committee first considered the minutes of the meeting held on the 5th November, 1947.

Some drafting changes were made in sub-clause (4) of clause 15 in Appendix A to those minutes. Clause 15, as so revised by the committee, is shown in Appendix A to these minutes. The committee was of opinion that the word "tribe" used in sub-clause (4) of clause 15 should be defined or made more specific. Further consideration of this matter was postponed till the next meeting of the committee.

Clause 53-A in Appendix B to the said minutes was further revised by the committee as shown in Appendix A to these minutes. It was decided that this clause should be substituted for the existing clause 53.

2. The committee then resumed discussion as regards the inclusion in the Constitution of a provision relating to immunity of the President from civil and criminal processes. It was decided that a provision should be made in the Constitution for an absolute immunity of the President from all civil and criminal proceedings in respect of public acts, and also for his absolute immunity from criminal proceedings during his term of office and for a restricted immunity from proceedings of a civil nature in respect of his private and personal acts, and that a new clause 53-A as shown in Appendix B to these minutes be inserted after clause 53 of the Constitution for the purpose.

3. The consideration of the Draft Constitution was then resumed :

Clause 53 : It was decided that sub-clause (3) of this clause should be revised and transferred to clause 42-A as sub-clauses (3) and (4) thereof as shown in Appendix C to these minutes.

Clause 54 : The committee was of opinion that the executive authority of the Centre should also extend in any State to matters enumerated in the Concurrent Legislative List where any law made by Parliament in respect of such matters so provides. It was accordingly decided that this clause should be revised as shown in Appendix C to these minutes.

4. The committee then adjourned till 10.30 A.M. on the 7th November, 1947.

APPENDIX A

RIGHTS OF FREEDOM

15. (1) Subject to public order, morality and health, every citizen shall have the right—

(a) to freedom of speech and expression;

- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) [Held over.]

(3) Nothing in clause (a) of sub-section (1) shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation or sedition.

(4) Nothing in clauses (d), (e), (f) and (g) of sub-section (1) shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said clauses for the protection of the interests of any tribe.

(5) Nothing in clause (g) of sub-section (1) shall affect the operation of any existing law, or prevent the State from making any law, prescribing or empowering any authority to prescribe the profession or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

53. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

- (a) in all cases where the punishment or sentence is by a Court Martial;
- (b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws;
- (c) in all cases where the sentence is a sentence of death.

(2) Nothing in clause (a) of sub-section (1) shall take away the power conferred by law on any officer of the armed forces of India to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in clause (c) of sub-section (1) shall, save as otherwise provided in any agreement under section 188, extend the power of the President under that clause to offences committed within States specified in Part III of the First Schedule.

APPENDIX B

53-A. (1) The President shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and duties.

(2) No criminal proceedings whatsoever shall be instituted, or proceeded with, against the President in any court during his term of office.

(3) No process for the arrest or imprisonment of the President shall issue from any court during his term of office.

(4) No civil proceedings shall be instituted against the President during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity whether before or after he entered upon his office as President until the expiration of two months next after notice in writing has been delivered to the President or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

APPENDIX C

42-A. (1) The executive power of India shall be vested in the President and may be exercised by him in accordance with this Constitution and the law.

(2) The supreme command of the Defence Forces of India shall be vested in the President. The exercise of such supreme command shall be regulated by law.

(3) Nothing in sub-section (1) shall be deemed to transfer to the President any functions conferred by any existing law on any Government of a State, court, officer, or local or other authority.

(4) Notwithstanding anything contained in this section, Parliament may, by law, transfer to the President any functions conferred by any existing law on any Government of a State, court, officer, or local or other authority or confer functions on authorities other than the President.

54. (1) Subject to the provisions of this Constitution, the executive authority of India shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the said authority does not, save as provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has power to make laws.

(2) Notwithstanding anything contained in this section a State and any officer or authority of such State may, until otherwise provided by Parliament or other competent authority, continue to exercise in matters with respect to which Parliament has power to make laws for that State, such executive authority or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

November 7, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopala-swami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri P. N. Krishna Mani, Assistant Secretary.

1. The committee first considered the minutes of the meeting held on the 6th November, 1947.

After further consideration it was decided that in sub-clause (4) of clause 15 in Appendix A to those minutes, after the words "any tribe" the words "which by reason of its social condition or habits requires special treatment" should be added. Clause 15 as so revised by the committee is shown in Appendix A to these minutes.

Sub-clause (4) of clause 53-A in Appendix B to the said minutes was further revised to make it clear that the provisions of that sub-clause would apply only when any relief was claimed against the President in any civil proceedings instituted against him during his term of office. Clause 53-A as so revised is shown in Appendix A to these minutes.

Clauses 42-A and 54 in Appendix C to the said minutes were further revised as shown in Appendix A to these minutes.

2. The committee then resumed consideration of the Draft Constitution.

Clause 55: No alteration was made in this clause, but it was decided that the heading to this clause "Administration of Federal Affairs" should be replaced by the heading "Council of Ministers".

Clause 56: A few modifications were made in sub-clause (1) of this clause, and it was decided that the proviso to sub-clause (5) of this clause should be omitted. This clause as revised by the committee is shown in Appendix B to these minutes.

Clause 57: This clause was slightly revised by the committee and the clause as revised is shown in Appendix B to these minutes.

3. The committee then adjourned till 10.30 A.M. on the 8th November, 1947.

APPENDIX A

RIGHTS OF FREEDOM

15. (1) Subject to public order, morality and health, every citizen shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) [Held over.]

(3) Nothing in clause (a) of sub-section (1) shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation or sedition.

(4) Nothing in clauses (d), (e), (f) and (g) of sub-section (1) shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said clauses for the protection of the interests of any tribe which by reason of its social condition or habits requires special treatment.

(5) Nothing in clause (g) of sub-section (1) shall affect the operation of any existing law, or prevent the State from making any law, prescribing or empowering any authority to prescribe the profession or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

42-A. (1) The executive power of India is vested in the President and may be exercised by him in accordance with this Constitution and the law.

(2) The supreme command of the Defence Forces of India shall be vested in the President. The exercise of such supreme command shall be regulated by law.

(3) Nothing in this section shall—

- (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority;
- (b) prevent Parliament from transferring by law to the President any functions

conferred by any existing law on any Government of a State or other authority;
or

- (c) prevent Parliament from conferring by law functions on authorities other than the President.

53-A. (1) The President shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and duties.

(2) No criminal proceedings whatsoever shall be instituted, or proceeded with, against the President in any court during his term of office.

(3) No process for the arrest or imprisonment of the President shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity whether before or after he entered upon his office as President until the expiration of two months next after notice in writing has been delivered to the President or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

54. (1) Subject to the provisions of this Constitution, the executive power of India shall extend—

- (a) to the matters with respect to which Parliament has power to make laws;
and

- (b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in clause (a) does not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of such State may, notwithstanding anything contained in this section, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

APPENDIX B

COUNCIL OF MINISTERS

55. There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

56. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) A Minister shall before entering upon office make a declaration in the presence of the President according to the form set out in that behalf in the Third Schedule to this Constitution.

(4) The Council shall be collectively responsible to the House of the People.

(5) A Minister who, for any period of six consecutive months, is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule to this Constitution.

(7) The question whether any, and if so, what advice was tendered by Ministers to the President shall not be inquired into in any court.

57. (1) The President shall appoint a person, being a person qualified to be appointed a judge of the Supreme Court, to be Advocate-General for India.

(2) It shall be the duty of the Advocate-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force; and in the performance of his duties the Advocate-General shall have right of audience in all courts in the territory of India.

(3) The Advocate-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

November 8, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalaswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Maulavi Saiyid Muhammad Saadulla.

In attendance : (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri P. N. Krishna Mani, Assistant Secretary.

1. The committee considered the minutes of the meeting held on the 7th November, 1947.

The committee was of opinion that there should be an oath of office including allegiance to the Constitution and also an oath of secrecy to be taken by each Minister before he would enter office. Sub-clause (3) of clause 56 in Appendix B to the said minutes was revised accordingly. Clause 56 as so revised is shown in Appendix A to these minutes.

Clause 57 was further revised by the committee as shown in Appendix A to these minutes.

2. At the suggestion of Shri N. Gopalaswami Ayyangar, clause 21 of the Draft Constitution was further revised by the committee as shown in Appendix B to these minutes.

3. The committee then resumed consideration of the Draft Constitution.

Clause 58 : This clause was agreed to by the committee subject to slight formal changes as shown in Appendix C to these minutes.

The committee was of opinion that there should be a provision defining the relation between the President and the Ministers specially as regards the regular supply of information relating to the conduct of business of the Government to him. Further consideration of this matter was postponed till the next meeting of the committee.

Chapter II : It was decided that the heading "The Federal Parliament" should be replaced by the heading "Parliament".

Clause 59: It was decided that this clause should be revised as shown in Appendix C to these minutes.

Clause 60: The consideration of this clause was postponed till the report of the Union Constitution Committee regarding the composition of the two Houses of Parliament was available.

The committee was of opinion that it would be more appropriate to use in the Constitution the nomenclatures "article" and "clause" instead of the nomenclatures "section" and "sub-section". It was accordingly decided that all references to "sections" and "sub-sections" in the Draft Constitution should be replaced by reference to "articles" and "clauses" respectively.

4. The committee then adjourned till 3 P.M. on the 4th December, 1947.

APPENDIX A

56. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule to this Constitution.

(4) The Council shall be collectively responsible to the House of the People.

(5) A Minister who, for any period of six consecutive months, is not a member of either House of the Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries of Ministers shall be such as Parliament may from time to time by law determine, and until Parliament so determines, shall be as specified in the Second Schedule to this Constitution.

(7) The question whether any, and if so, what advice was tendered by Ministers to the President shall not be inquired into in any court.

57. (1) The President shall appoint a person, being a person qualified to be appointed a judge of the Supreme Court, to be Advocate-General for India.

(2) It shall be the duty of the Advocate-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Advocate-General shall have right of audience in all courts in the territory of India.

(4) The Advocate-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

APPENDIX B

21. Every religious denomination or any section thereof shall have the right—

(1) to establish and maintain institutions for religious and charitable purposes;

(2) to manage its own affairs in matters of religion;

(3) to own and acquire movable and immovable property; and

(4) to administer such property in accordance with law.

APPENDIX C

58. (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

CHAPTER II—PARLIAMENT

General

59. The legislative power of the Union shall be vested in Parliament which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

December 4, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalaswami Ayyangar; (3) Shri K. M. Munshi; (4) Maulavi Saiyid Muhammad Saadulla.

In attendance : Shri S. N. Mukerjee, Joint Secretary.

The committee resumed further consideration of the Draft Constitution.

2. The consideration of sub-clauses (1) to (4) of clause 60 was postponed. Sub-clauses (5) to (11) were considered and it was provisionally decided that these sub-clauses should be revised as shown in the Appendix to these minutes.

3. The committee was of opinion that sub-clause (6) of clause 60 should be omitted, although the provisions of that sub-clause were adopted by the Constituent Assembly, as the committee did not see any reason for retaining it.

4. The committee then adjourned till 3 P.M. on the 5th December, 1947.

APPENDIX

60. (1) [Held over.]

(2) [Held over.]

(3) [Held over.]

(4) [Held over.]

(5) (a) Subject to the provisions of article...of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters on the basis of adult suffrage in territorial constituencies delimited by or under the law made by Parliament.

(b) [Held over.]

(5-A) Parliament may, by law, provide for the representation in the House of the People of territories other than States.

(6) Omitted.

(7) The Council of States shall not be subject to dissolution, but as near as may be one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in the Fourth Schedule to this Constitution.

(8) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as the dissolution of the House:

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not extending in any case beyond the period of six months from the expiry of the period of the emergency.

(9) When States specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single unit for the purposes of this article.

(10) Subject to the provisions of this Constitution, all matters relating to or connected with elections to, or the extent of representation in, either House of Parliament or the grouping of States for the purpose of returning representatives to the Council of States shall be regulated by Parliament by law.

December 5, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalaswami Ayyangar; (3) Shri K. M. Munshi; (4) Maulavi Saiyid Muhammad Saadulla.

In attendance : Shri S. N. Mukerjee, Joint Secretary.

The committee considered the minutes of the meeting held on the 4th December, 1947. Sub-clauses (5) to (11) of clause 60 as shown in the Appendix to those minutes were further revised by the committee and clause 60 as so revised is shown in Appendix A to these minutes.

The committee retained in sub-clause (9) of clause 60 as revised by the committee the provision that the life of the House of the People would be four years as the said provision had been adopted by the Constituent Assembly, but expressed the view that the period of four years in that sub-clause should be changed to five years.

2. The committee then considered the question relating to the insertion of a provision defining the relation between the President and the Ministers, especially as regards the regular supply of information relating to the conduct of business of the Government to the President. It was decided that a new clause 58-A as shown in Appendix B to these minutes should be inserted after clause 58 for this purpose.

3. The committee thereafter resumed consideration of the Draft Constitution.

Clause 61 : It was decided that this clause should be revised as shown in Appendix C to these minutes.

Clauses 62 and 63 : These clauses were agreed to by the committee subject to formal changes made therein as shown in Appendix C to these minutes.

Clause 64 : It was decided that this clause should be revised as shown in Appendix C to these minutes.

4. The committee then adjourned till 10 A.M. on the 6th December, 1947.

APPENDIX A

60. (1) [Held over.]

(2) [Held over.]

(3) [Held over.]

(4) [Held over.]

(5) (a) Subject to the provisions of article...of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters.

(b) For the purpose of sub-clause (a), the States of India shall be divided or grouped into territorial constituencies and the number of representatives to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population :

Provided that the ratio of the total number of representatives of these States specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States specified in Parts I and II of that Schedule to the total population of such States.

*(c) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout the States of India.]

(6) The election to the House of the People shall be on the basis of adult suffrage.

(7) Parliament may, by law, provide for the representation in the House of the People of territories other than States.

(8) The Council of States shall not be subject to dissolution, but as nearly as may be one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in the Fourth Schedule.

(9) The House of the People, unless sooner dissolved, shall continue for four years from the date appointed for its first meeting and no longer, and the expiration of the said period of four years shall operate as the dissolution of the House :

Provided that the said period may, during an emergency, be extended by the President for a period not exceeding one year at a time and not extending in any case beyond the period of six months from the expiry of the period of the emergency.

(10) When States specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single unit for the purposes of this article.

(11) Subject to the provisions of this Constitution, Parliament may, by law, make provision with respect to all matters relating to or connected with the delimitation of constituencies and elections to either House of Parliament and for carrying into effect the foregoing provisions of this article and securing the due constitution of the two Houses of Parliament.

APPENDIX B

58-A. (1) The President shall have the power to call for any information relating to the conduct of business of the Government of India.

*The committee was of opinion that this sub-clause was not necessary and should be omitted. It has, however, been retained here as the provisions thereof have been adopted by the Constituent Assembly.

(2) It shall be the duty of the Prime Minister to supply the President with all decisions of the Council of Ministers relating to the administration of the affairs of India and proposals for legislation as and when they are made.

(3) The President shall also have the power to require the decision of the Council of Ministers with regard to any particular matter to be submitted to the Council for reconsideration.

APPENDIX C

61. (1) Parliament shall be summoned to meet once at least every six months.
(2) Subject to the provisions of this article, the President may from time to time—

(a) summon the Houses or either House of Parliament to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People.

62. (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

63. Every Minister and the Advocate-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

OFFICERS OF HOUSES

64. (1) The Vice-President of India shall be *ex-officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof.

(3) A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council :

Provided that no resolution for the purpose of sub-clause (c) of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

(4) (a) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of the President under article 51-B of this Constitution, the duties of the office shall be performed by the Deputy Chairman, or if the office of Deputy Chairman is also vacant by such member of the Council of States as the President may appoint for the purpose.

(b) During the absence of the Chairman from any sitting of the Council of States the Deputy Chairman or, if he is also absent, such person as may be determined by

the rules of procedure of the Council, or, if no such person is present, such other person, as may be determined by the Council, shall act as Chairman.

64-A. (1) The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

(2) A member holding office as Speaker or Deputy Speaker of the House of the People—

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time by writing under his hand addressed, in case where such member is the Speaker, to the Deputy Speaker, and in case where such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of sub-clause (c) of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

(3) (a) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(b) During the absence of the Speaker from any sitting of the House of the People, the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

64-B. There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People such salaries as may be respectively fixed by Parliament by law, and until provision in that behalf is so made, such salaries as the President may determine.

December 6, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri K. M. Munshi; (3) Maulavi Saiyid Muhammad Saadulla; (4) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee met from 10 A.M. to 1 P.M. and then again from 3 P.M. to 5 P.M.

2. The committee first considered the minutes of the meeting held on the 5th December, 1947.

Clauses 60 and 58-A, as shown in Appendices A and B respectively to those minutes, were further revised as shown in Appendix A to these minutes.

It was decided that clauses 64 and 64-A as shown in Appendix C to those minutes, should be split up into six clauses 64, 64-A, 64-B, 64-C.

64-D and 64-E as shown in Appendix A to these minutes. Clause 64-B as shown in Appendix C to those minutes was renumbered as clause 64-F as shown in Appendix A to these minutes.

3. In view of the modifications made by the committee in clause 64 of the Draft Constitution it was decided that in the proviso to clause 51-A of the Draft Constitution as revised by the committee, the words "and the said office shall during such period be deemed to be vacant" should be omitted. Clause 51-A as revised by the committee is shown in Appendix B to these minutes.

4. It was suggested by the Chairman that a new clause 62-A should be inserted after clause 62 to provide that at the commencement of every session the President would address Parliament and inform it of the purposes for which it was summoned and that there should be an opportunity for a debate on the address to follow the practice prevalent in the Parliament of the United Kingdom regarding the King's speech on the opening of a new session of Parliament and the debate thereon. Further consideration of this matter was postponed till the next meeting. A draft for the purpose on the lines suggested by the Chairman is given in Appendix C to these minutes.

5. The committee then resumed consideration of the Draft Constitution :

Clauses 65 and 66 : These clauses were agreed to by the committee subject to formal changes made therein as shown in Appendix D to these minutes.

Clause 67 : The committee was of opinion that the provision for vacation by a person who was chosen a member of both Houses of Parliament of his seat in one House or the other should be made by law by Parliament, and it was decided that clause 67 should be revised as shown in Appendix D to these minutes.

Clause 68 : The committee was of opinion that the provisions regarding disqualifications contained in paragraphs (d) to (f) of sub-clause (1) of clause 68 should not be included in the Constitution but should be left to be made by Parliament by law. It was also decided to omit sub-clauses (2) and (3) of this clause. Sub-clause (4) of this clause was also revised to bring it into line with the explanation to sub-clause (2) of clause 46 of the Draft Constitution as revised by the committee. Clause 68 as revised by the committee is shown in Appendix D to these minutes.

Clause 69 : It was decided that this clause should be revised as shown in Appendix D to these minutes.

Clauses 70 and 71 : The committee was of opinion that these clauses should be revised as shown in Appendix D to these minutes.

Clauses 72, 73 and 74 : These clauses were agreed to by the committee subject to formal changes made therein. These clauses as revised by the committee are shown in Appendix D to these minutes.

Clause 75 : The committee agreed to the addition of a new sub-clause

to this clause to provide for the endorsement of a certificate by the Speaker on Money Bills before their transmission to the Council of States and their presentation to the President for assent as recommended by the Expert Committee on financial provisions to be included in the Constitution. This clause as revised by the committee is shown in Appendix D to these minutes.

Clause 76 : This clause was agreed to by the committee subject to formal changes made therein as shown in Appendix D to these minutes.

Clause 77 : It was decided that this clause should be revised as shown in Appendix D to these minutes.

Clauses 78, 79 and 80 : The committee agreed to these clauses subject to formal changes made therein as shown in Appendix D to these minutes.

New clause 80-A : The committee agreed to the insertion of a new clause 80-A to provide for the voting of excess grants as recommended by the Expert Committee on financial provisions. This new clause is shown in Appendix D to these minutes.

The committee also agreed to the consequential change recommended in sub-clause (3) of clause 79 by the said Expert Committee. The said consequential change has been incorporated in clause 79 as shown in Appendix D to these minutes.

Clauses 81 and 82 : The committee agreed to these clauses subject to formal changes made therein as shown in Appendix D to these minutes.

6. The committee then adjourned till 11 A.M. on Monday, the 8th December, 1947.

APPENDIX A

58-A. (1) It shall be the duty of the Prime Minister—

(a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of India and proposals for legislation; and

(b) to furnish such information relating to the administration of the affairs of India and proposals for legislation as the President may call for.

(2) It shall also be the duty of the Prime Minister to submit for the consideration of the Council of Ministers any matter on which a decision has been made by a Minister but which has not been considered by the Council, if the President so requires.

60. (1) [Held over.]

(2) [Held over.]

(3) [Held over.]

(4) [Held over.]

(5) (a) Subject to the provisions of article...of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters.

(b) For the purpose of sub-clause (a), the States of India shall be divided or grouped into territorial constituencies and the number of representatives to be allotted to each such constituency shall be so determined as to ensure that there

shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population:

Provided that the ratio of the total number of representatives of the States specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States specified in Parts I and II of that Schedule to the total population of such States.

*[(c) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout the States of India.]

(6) The election to the House of the People shall be on the basis of adult suffrage.

(7) Parliament may, by law, provide for the representation in the House of the People of territories other than States.

(8) When States specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single unit for the purposes of this article.

60-A. (1) The Council of States shall not be subject to dissolution, but as nearly as may be one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in the Fourth Schedule.

(2) The House of the People, unless sooner dissolved, shall continue for †[four years] from the date appointed for its first meeting and no longer, and the expiration of the said period of †[four years] shall operate as the dissolution of the House :

Provided that the said period may, during an emergency be extended by the President for a period not exceeding one year at a time and not extending in any case beyond the period of six months from the expiry of the period of the emergency.

60-B. Subject to the provisions of this Constitution, Parliament may, by law, regulate all matters necessary for carrying into effect the provisions of articles 60 and 60-A of this Constitution and securing the due constitution of the two Houses of Parliament, and in particular, but without prejudice to the generality of the foregoing words, regulate matters relating to or connected with the delimitation of constituencies and elections to either House of Parliament.

OFFICERS OF PARLIAMENT

64. (1) The Vice-President of India shall be *ex-officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof.

64-A. A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

*The committee was of opinion that sub-clause (c) was not necessary and should be omitted. It has, however, been retained here as the provisions thereof have been adopted by the Constituent Assembly.

†The committee was of opinion that the period of four years mentioned in clause (2) of article 60-A should be changed to *five years*.

- (c) may be removed from his office for incapacity or want of confidence by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

64-B. (1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of the, President under article 51-B of this Constitution, the duties of the office shall be performed by the Deputy Chairman, or if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States, the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

64-C. The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

64-D. A member holding office as Speaker or Deputy Speaker of the House of the People—

- (a) shall vacate his office if he ceases to be a member of the House of the People;
- (b) may at any time by writing under his hand addressed, in the case where such member is the Speaker, to the Deputy Speaker, and in the case where such member is the Deputy Speaker, to the Speaker, resign his office; and
- (c) may be removed from his office for incapacity or want of confidence by a resolution of the House of the People passed by a majority of all the then members of the House:

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

64-E. (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the House of the People, the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

64-F. There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People such salaries as may be respectively fixed by Parliament by law, and, until provision in that behalf is so made, such salaries as the President may determine.

APPENDIX B

51-A. The Vice-President shall be *ex-officio* Chairman of the Council of States and shall not hold any other office or position of emolument:

Provided that during any period when the Vice-President acts as President or discharges the functions of the President under article 51-B of this Constitution, he shall not perform the duties of the office of Chairman of the Council of States.

APPENDIX C

62-A. (1) At the commencement of every session the President shall address the House of the People and inform the House of the causes for which it has been summoned.

(2) Provision shall be made by the rules regulating the procedure of the House of the People for the allotment of time for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

APPENDIX D

CONDUCT OF BUSINESS

65. (1) Save as provided in this Constitution, all questions at any sitting or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Chairman or Speaker or person acting as such.

The Chairman or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a House, less than one-sixth of the total number of members of the House are present, it shall be the duty of the Chairman or Speaker or person acting as such either to adjourn the House, or to suspend the meeting until at least one-sixth of the members are present.

DISQUALIFICATIONS OF MEMBERS

66. Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, a declaration according to the form set out for the purpose in the Third Schedule.

67. (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article; or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be;

his seat shall thereupon become vacant.

(3) If for a period of sixty days a member of either House of Parliament is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be

taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

68. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder;
- (b) if he is of unsound mind and stands so declared by a competent court;
- (c) if he is an undischarged insolvent;
- (d) if he is so disqualified by or under any law for the time being in force.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that—

- (a) he is a Minister either for India or for any State for the time being specified in Parts I and II of the First Schedule; or
- (b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is not in regular employment of the State.

69. If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 66 of this Constitution, or when he knows that he is not qualified or is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law for the time being in force, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Government of India.

PRIVILEGES AND IMMUNITIES OF MEMBERS

70. (1) Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of Parliament as they apply in relation to members of Parliament.

71. Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the Legislature of the Dominion of India.

LEGISLATIVE PROCEDURE

72. (1) Subject to the special provisions of this Part of this Constitution with respect to Money Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 73 and 74 of this Constitution, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People or which having been passed by the House of the People is pending in the Council of States shall, subject to the provisions of article 73 of this Constitution, lapse on a dissolution of the House of the People.

73. (1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being presented to the President for his assent, the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1) of this article, no account shall be taken of any time during which Parliament is prorogued or during which both Houses are adjourned for more than four days.

(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

74. (1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of thirty days from the date of its receipt of the Bill

return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period of thirty days in the form in which it was passed by the House of the People.

75. (1) For the purpose of this Chapter, a Bill shall be deemed to be a Money Bill if it makes provisions—

(a) for imposing or increasing any tax;

(b) for regulating the borrowing of money or the giving of any guarantee by the Government of India, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Government of India; or

(c) for declaring any expenditure to be expenditure charged on the revenues of India, or for the increasing of the amount of any such expenditure.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition or increase of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under the last preceding article, and when it is presented to the President for assent under the next succeeding article, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

76. When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill, or that he withholds assent therefrom:

Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly.

PROCEDURE IN FINANCIAL MATTERS

77. (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part of this Constitution referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of India; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of India.

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of India—

- (a) the emoluments and allowances of the President and other expenditure relating to his office;
- (b) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (c) (i) the salaries, allowances and pensions payable to or in respect of judges of the Supreme Court;
- (ii) the pensions payable to or in respect of judges of the Federal Court;
- (iii) the salaries, allowances and pensions payable to or in respect of judges of any High Court which immediately before the commencement of this Constitution exercised jurisdiction within the territories of the States specified in Parts I and II of the First Schedule;
- (iv) the salaries, allowances and pensions payable to or in respect of judges of any High Court within the territories of the States of India appointed by the President after the commencement of this Constitution;
- (d) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (e) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

78. (1) So much of the estimates as relates to expenditure charged upon the revenues of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of these estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People and the House of the People shall have power to assent, or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

79. (1) The President shall authenticate by his signature a schedule specifying—

- (a) the grants made by the House of the People under the last preceding article;
- (b) the several sums required to meet the expenditure charged on the revenues of India, but not exceeding in any case, the sum shown in the statement previously laid before Parliament.

(2) The schedule so authenticated shall be laid before the House of the People, but shall not be open to discussion or vote in Parliament.

(3) Subject to the provisions of the next two succeeding articles, no expenditure from the revenues of India shall be deemed to be duly authorized unless it is specified in the schedule so authenticated.

80. If in respect of any financial year further expenditure from the revenues of India becomes necessary over and above the expenditure theretofore authorized for that year, the President shall cause to be laid before both the Houses of Parliament a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding articles shall have effect in relation to that statement

and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

80-A. If in any financial year expenditure from the revenues of India has been incurred on any service for which the vote of the House of the People is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the House of the People and the provisions of articles 78 and 79 of this Constitution shall have effect in relation to such demand as they have effect in relation to a demand for a grant.

81. (1) A Money Bill or an amendment thereto shall not be introduced or moved except on the recommendation of the President.

(2) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

PROCEDURE GENERALLY

82. (1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(3) Until rules are made under this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(4) At a joint sitting of the two Houses, the Chairman of the Council of States, or in his absence such person as may be determined by rules of procedure made under this article, shall preside.

December 8, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri K. M. Munshi; (3) Maulavi Saiyid Muhammad Saadulla; (4) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

The committee considered the minutes of the meeting of the committee held on the 6th December, 1947.

Clauses 58-A, 60-A and 64-F as shown in Appendix A to those minutes were further revised as shown in Appendix A to these minutes.

Clause 62-A as shown in Appendix C to those minutes was further revised as shown in Appendix A to these minutes.

It was decided that in paragraph (d) of sub-clause (1) of clause 68 and in clause 69 as shown in Appendix D to those minutes, for the words "for the time being in force" the words "made by Parliament" should be substituted.

It was also decided that in paragraph (c) of sub-clause (1) of clause

73 as shown in Appendix D to those minutes, for the words "presented to the President for his assent" the words "passed by it" should be substituted.

The committee was of opinion that clauses 72(1), 75, 77, 81 and 82 as shown in Appendix D to those minutes should be revised as shown in Appendix A to these minutes.

2. The committee then resumed consideration of the Draft Constitution :

Clause 83 : The consideration of this clause was held over till the next meeting of the committee.

Clauses 84 and 85 : The committee agreed to these clauses subject to formal changes made therein as shown in Appendix B to these minutes.

3. The committee then adjourned till 11 A.M. on the 9th December, 1947.

APPENDIX A

58-A. It shall be the duty of the Prime Minister—

- (a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of India and proposals for legislation;
- (b) to furnish such information relating to the administration of the affairs of India and proposals for legislation as the President may call for; and
- (c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

60-A. (1) The Council of States shall not be subject to dissolution, but as nearly as may be one-third of the members thereof shall retire in every second year in accordance with the provisions in that behalf contained in the next two succeeding clauses.

(2) Upon the first constitution of the Council for the purpose of securing that in every second year one-third of the members thereof shall retire, one-third of the persons first chosen shall be chosen to serve for two years only, one-third shall be chosen to serve for four years only and one-third shall be chosen to serve for six-years, and thereafter in every second year persons shall be chosen to fill for six years the seats then becoming vacant in consequence of the provisions of this article.

(3) For the purpose of sub-clause (2) of this article, the President shall, by order, specify the seats of different classes to be filled upon the first constitution of the Council by members chosen to serve for two years only, by members chosen to serve for four years only, and by members chosen to serve for six years.

60-AA. The House of the People, unless sooner dissolved, shall continue for *[four years] from the date appointed for its first meeting and no longer, and the expiration of the said period of *[four years] shall operate as the dissolution of the House:

*The committee was of opinion that the period of four years mentioned in article 60-AA should be changed to five years as under the Parliamentary system of Government the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

Provided that the said period may, during an emergency be extended by the President for a period not exceeding one year at a time and not extending in any case beyond the period of six months from the expiry of the period of the emergency.

62-A. (1) At the commencement of every session the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

64-F. There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People such salaries and allowances as may be respectively fixed by Parliament by law, and, until provision in that behalf is so made, such salaries as the President may determine.

LEGISLATIVE PROCEDURE

72. (1) Subject to the provisions of articles 74 and 81 of this Constitution with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

75. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely :

- (a) the imposition, repeal, remission, alteration or regulation of taxes;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- (c) the declaring of any expenditure to be expenditure charged on the revenues of India or for increasing the amount of such expenditure;
- (d) the receipt of money on account of the revenues of the Government of India or the custody or issue of such money or the audit of the accounts of the Government of India; or
- (e) any matter incidental to any of the matters specified in sub-clauses (a) to (d) of this clause.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, repeal, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under the last preceding article, and when it is presented to the President for assent under the next succeeding article, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

PROCEDURE IN FINANCIAL MATTERS

77. (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and

expenditure of the Government of India for that year, in this Part of this Constitution referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of India; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of India,

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of India—

(a) the emoluments and allowances of the President and other expenditure relating to his office;

(b) the emoluments and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) (i) the salaries, allowances and pensions payable to or in respect of judges of the Supreme Court;

(ii) the pensions payable to or in respect of judges of the Federal Court;

(iii) the salaries, allowances and pensions payable for service in India to or in respect of judges of any High Court which immediately before the commencement of this Constitution exercised jurisdiction within such of the territories of the States specified on the date of such commencement in Parts I and II of the First Schedule as were included within such States immediately before such commencement;

(iv) the salaries, allowances and pensions payable to or in respect of judges of any High Court within the territories of the States of India appointed by the President after the commencement of this Constitution;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

81. (1) A Bill or amendment making provision for any of the matters specified in sub-clauses (a) to (c) of clause (1) of article 75 of this Constitution shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, repeal, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

PROCEDURE GENERALLY

82. (1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People, or in his absence such person as may be determined by rules of procedure made under clause (3) of this article, shall preside.

APPENDIX B

83. [Held over.]

84. (1) No discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge as hereinafter provided.

(2) In this article the reference to a High Court shall be construed as including a reference to any court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of Chapter IV of Part IV of this Constitution.

85. (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

December 9, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Shri K. M. Munshi; (4) Maulavi Saiyid Muhammad Saadulla; (5) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser ; (2) Shri S. N. Mukerjee, Joint Secretary ; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

The committee considered the minutes of the meeting of the committee held on the 8th December, 1947.

Clauses 60-A and 60-AA as shown in Appendix A to those minutes were further revised and combined into one clause 60-A as shown in Appendix A to these minutes.

Clause 75 as shown in Appendix A to those minutes was also revised as shown in Appendix A to these minutes.

Further consideration of clauses 77 and 81 as shown in Appendix A to those minutes was postponed till the next meeting of the committee.

2. The committee then resumed consideration of the Draft Constitution :

Clause 86 : This clause was agreed to subject to formal changes as shown in Appendix B to these minutes.

Clause 87 : It was decided that this clause should be revised as shown in Appendix B to these minutes. The committee was of opinion that it should be provided in sub-clause (4) of this clause that the address to be presented to the President should be supported by not less than two-thirds of the members present and voting and that provision should also be made for enabling Parliament to prescribe the procedure for investigation into the misbehaviour or incapacity of the judge sought to be removed. Shri Alladi Krishnaswami Ayyar was, however, of opinion that the provision regarding the two-thirds majority should not be included in the Constitution but should be left to be regulated by Parliament by law.

Clause 88 : It was decided that this clause should be revised as shown in Appendix B to these minutes.

Clause 89 : This clause was agreed to by the committee without any change.

Clause 90 : It was decided that this clause should be revised as shown in Appendix B to these minutes.

Clause 91 : This clause was agreed to by the committee without any change.

Clause 92 : This clause will be further considered by the committee at its next meeting.

3. The committee then adjourned till 11 A.M. on the 10th December, 1947.

APPENDIX A

60-A. (1) The Council of States shall not be subject to dissolution, but as nearly as may be one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for *[four years] from the date appointed for its first meeting and no longer, and the expiration of the said period of *[four years] shall operate as the dissolution of the House:

Provided that the said period may, during an emergency be extended by the President for a period not exceeding one year at a time and not extending in any case beyond the period of six months from the expiry of the period of the emergency.

75. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:

(a) the imposition, abolition, remission, alteration or regulation of any tax;

*The committee was of opinion that the period of four years mentioned in article 60-A (2) should be changed to five years as under the Parliamentary system of Government the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
 - (c) supply;
 - (d) the appropriation of the revenues of India;
 - (e) the declaring of any expenditure to be expenditure charged on the revenues of India or for increasing the amount of such expenditure;
 - (f) the receipt of money, on account of the revenues of India or the custody or issue of such money or the audit of the accounts of the Government of India; or
 - (g) any matter incidental to any of the matters specified in items (a) to (f) of this clause.
- (2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
- (3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.
- (4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under the last preceding article, and when it is presented to the President for assent under the next succeeding article, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

APPENDIX B

CHAPTER III—LEGISLATIVE POWERS OF THE PRESIDENT

86. (1) If at any time when Parliament is not in session the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament assented to by the President, but every such Ordinance—

(a) shall be laid before Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

CHAPTER IV—THE FEDERAL JUDICATURE

87. (1) There shall be a Supreme Court of India consisting of a Chief Justice and such number of other judges not being less than ten as Parliament may by law prescribe.

(2) Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the

Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of the Supreme Court shall always be consulted:

Provided further that—

(a) a judge may, by resignation under his hand addressed to the President, resign his office;

(b) a judge may be removed from his office by the President in the manner provided in clause (4).

(3) A person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a judge of a High Court or of two or more such courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation I: In this clause 'High Court' means a High Court which exercises, or which before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II: In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office after he became an advocate, shall be included.

(4) A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting being presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a judge under the last preceding clause.

(6) Every person appointed to be a judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him a declaration according to the form set out for the purpose in the Third Schedule.

88. The judges of the Supreme Court shall be entitled to such salaries and allowances, and to such rights in respect of leave and pensions, as may from time to time be fixed by or under law made by Parliament, and until they are so fixed shall be entitled to such salaries, allowances and rights in respect of leave of absence or pension as are specified in the Second Schedule:

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

89. If the office of Chief Justice of the Supreme Court becomes vacant, or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by the President to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the President may appoint for the purpose.

90. (1) If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the court, owing to a vacancy or vacancies, or to the absence through illness or on leave or in the discharge of other duties assigned by statute or otherwise, or to the disqualification of a judge or judges, or if by reason of any temporary increase in the business of the Supreme Court the strength of the judges of the court should for the time being be increased, the Chief Justice or, in his absence, the acting Chief Justice may, after consultation

with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the court, as an *ad hoc* judge, for such period as may be necessary, of a judge of a High Court to be designated by him.

(2) It shall be the duty of the judge, who has been so designated, in priority to other duties of his office to attend the sittings of the Supreme Court at the time and for the period for which his attendance shall be required, and while so attending he shall possess the powers and privileges and shall discharge the duties of an associate judge of the Supreme Court.

91. The Supreme Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice may, with the approval of the President, from time to time, appoint.

December 10, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalaswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Maulavi Saiyid Muhammad Saadulla; (6) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary ; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The Chairman mentioned to the committee about the request made to him by the Chairman of the Hindi Translation Committee for the supply of copies of the draft clauses of the Constitution as settled by the Drafting Committee. The committee agreed to the request and it was decided that the clauses of the Draft Constitution as settled by the committee might be supplied by instalments to the Hindi Translation Committee, and that in the first instance clauses 1 to 59 might be supplied to that committee.

2. The committee then considered the minutes of the meeting held on the 9th December, 1947.

Clause 87, as shown in Appendix A to those minutes, was further revised as shown in Appendix A to these minutes.

No alteration was made by the committee in clause 88 as shown in Appendix A to those minutes, but the committee was of opinion that a provision for the saving of the rights as respects salaries of the existing judges of the Federal Court would be necessary in the transitional provisions as the Federal Court would function as the Supreme Court during the period of transition.

It was decided that a new clause 90-A as shown in Appendix A to these minutes should be inserted after clause 90 for enabling the Chief Justice or the acting Chief Justice of the Supreme Court to requisition, at any time, the services of retired judges of the Supreme Court or the Federal Court.

3. Clause 81 as shown in Appendix A to the minutes of the 8th December was further revised as shown in Appendix B to these minutes.

Further consideration of clause 77 as shown in Appendix A to those minutes was postponed till the next meeting of the committee.

4. Clause 68, as shown in Appendix D to the minutes of the meeting held on the 6th December, 1947, was also further revised by the committee as shown in Appendix C to these minutes to include therein the provisions of clause 6-A of the Draft Constitution.

5. The committee thereafter resumed consideration of the Draft Constitution.

Clause 83 : This clause was agreed to by the committee subject to changes made in sub-clause (1) thereof as shown in Appendix D to these minutes.

Clauses 92 to 94 : It was decided that these clauses should be revised as shown in Appendix D to these minutes and a new clause 94-A as shown therein should be inserted to provide for appeals in certain criminal cases by special leave.

6. The committee then adjourned till 11 A.M. on the 12th December, 1947.

APPENDIX A

CHAPTER IV—THE FEDERAL JUDICATURE

87. (1) There shall be a Supreme Court of India consisting of a Chief Justice and such number of other judges not being less than *[ten] as Parliament may by law prescribe.

(2) Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of the Supreme Court shall always be consulted:

Provided further that—

(a) a judge may, by writing under his hand addressed to the President, resign his office;

(b) a judge may be removed from his office by the President in the manner provided in clause (4).

(3) A person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a judge of a High Court or of two or more such courts in succession; or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation 1 : In this clause 'High Court' means a High Court which exercises, or which before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation 11 : In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person held judicial office after he became an advocate, shall be included.

*Some members of the committee felt that the number 'ten' in sub-clause (1) of clause 87 should be replaced by the number 'six' as six judges would in the beginning be sufficient and Parliament may, by law, afterwards increase the number.

(4) A judge of the Supreme Court shall not be removed from his office except by an order of the President passed on an address supported by not less than two-thirds of the members present and voting being presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of address and for the investigation and proof of the misbehaviour or incapacity of a judge under the last preceding clause.

(6) Every person appointed to be a judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President or some person appointed by him a declaration according to the form set out in that behalf in the Third Schedule.

90-A. Notwithstanding anything contained in this Chapter, any person who has been a judge of the Supreme Court or of the Federal Court may, at any time, after retiring from that office, upon the written request of the Chief Justice or the acting Chief Justice of the Supreme Court, attend at the sittings of the court for such period as may be specified in the request; and while so attending, he shall possess the powers and privileges and shall discharge the duties of a judge of the Supreme Court.

APPENDIX B

81. (1) A Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 75 of this Constitution shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States :

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

APPENDIX C

68. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is under any acknowledgment of allegiance or adherence to a foreign power or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power;

(e) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article a person shall not be deemed to hold an

office of profit under the Government of India or the Government of any State by reason only that—

- (a) he is a Minister either for India or for any State specified in Parts I and II of the First Schedule; or
- (b) he is a Minister for any State specified in Part III of the First Schedule, if he is not in regular employment of the State.

APPENDIX D

83. (1) In Parliament business shall be transacted in Hindi or English:

Provided that the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue.

(2) The Chairman of the Council of States or the Speaker of the House of the People shall, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People, as the case may be, a summary of the speech delivered by a member in a language other than that used by the member and such summary shall be included in the record of the proceedings of the House in which such speech has been delivered.

92. (1) Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute between—

- (a) the Government of India and one or more States, or
- (b) the Government of India and any State or States on one side and one or more other States on the other, or
- (c) two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to—

- (i) a dispute to which a State specified in Part III of the First Schedule is a party if the dispute arises out of any provision of a treaty, agreement, engagement, *sanad* or other similar instrument which was entered into or executed before the commencement of this Constitution;
- (ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, *sanad* or other similar instrument which expressly provides that the said jurisdiction shall not extend to such a dispute.

(2) Nothing in clause (i) of the proviso to the preceding clause of this article shall prevent the President from referring under article 101 of this Constitution a dispute of the kind mentioned in the said clause (i) to the Supreme Court for decision.

93. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in a civil or criminal proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution, and it shall be the duty of every such High Court to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to the Supreme Court if no such certificate had been given, and with the leave of the Supreme Court on any other ground as well.

(3) Where such a certificate is applied for but is not given, any party in the case may appeal to the Supreme Court if the Supreme Court grants special leave to appeal.

94. Subject to the provisions of any law made in this behalf by Parliament, an appeal shall lie to the Supreme Court—

(a) from a judgment, decree or final order of a High Court in a State specified in Part I or Part II of the First Schedule, if the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and where the judgment, decree or final order appealed from affirms the decision of the court immediately below, the appeal involves some substantial question of law; or

(b) from any judgment, decree or final order of a civil court in any State specified in Part I or Part II of the First Schedule in cases where the provisions of article 93 do not apply, if the Supreme Court grants special leave to appeal.

94-A. The Supreme Court may grant special leave to appeal from any order of conviction or sentence made, passed, or confirmed in any criminal proceedings by any court of final jurisdiction in a State, if the Supreme Court is satisfied that there has been grave miscarriage of justice by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise.

December 12, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopala-swami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Maulavi Saiyid Muhammad Saadulla; (6) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

The committee considered the minutes of the meeting held on the 10th December, 1947.

Clause 68 as shown in Appendix C to those minutes was further revised as shown in Appendix A to these minutes.

Clause 92 as shown in Appendix D to those minutes was further revised as shown in Appendix A to these minutes.

It was decided that clauses 93, 94 and 94-A, as shown in Appendix D to those minutes, should be replaced by clauses 93, 94, 94-A and 94-B as shown in Appendix A to these minutes.

2. The committee then considered clause 77, as shown in Appendix A to the minutes of the meeting held on the 8th December, 1947, and it was decided that the said clause should be revised as shown in Appendix B to these minutes.

3. The committee then resumed consideration of the Draft Constitution :

Clause 95 : It was decided that this clause should be revised as shown in Appendix C to these minutes.

Clause 96 : This clause will be further considered by the committee at its next meeting.

4. The committee then adjourned till 11 A.M. on the 13th December, 1947.

APPENDIX A

68. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

- (a) if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder ;
- (b) if he is of unsound mind and stands so declared by a competent court ;
- (c) if he is an undischarged insolvent ;
- (d) if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power ;
- (e) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that—

- (a) he is a Minister either for India or for any State specified in Parts I and II of the First Schedule ; or
- (b) he is a Minister for any State specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

92. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

- (a) between the Government of India and one or more States, or
- (b) between the Government of India and any State or States on one side and one or more other States on the other, or
- (c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extend to—

- (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, *sanad* or other similar instrument which was entered into or executed before the fifteenth day of August, 1947 and has or has been continued in operation after such date ;
- (ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, *sanad* or other similar instrument which provides that the said jurisdiction shall not extend to such a dispute.

93. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in a civil or criminal proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution, and it shall be the duty of every such High Court to consider in every case whether or not any such question is involved and of its own motion to give or to withhold a certificate accordingly.

(2) Where such a certificate is given, any party in the case may appeal to the

Supreme Court on the ground that any such question as aforesaid has been wrongly decided, and on any ground on which that party could have appealed without special leave to the Supreme Court if no such certificate had been given, and with the leave of the Supreme Court on any other ground as well.

94. (1) Subject to the provisions of any law made in this behalf by Parliament, an appeal shall lie to the Supreme Court from a judgment, decree or final order of a High Court in a State specified in Part I or Part II of the First Schedule—

(a) if the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and where the judgment, decree or final order appealed from affirms the decision of the court immediately below, the appeal involves some substantial question of law; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.

(2) Notwithstanding anything in articles 93 and 94-A any party appealing to the Supreme Court under clause (1) may take as one of the grounds in such appeal the ground that the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided.

94-A. The Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from any judgment, decree or final order of a High Court in a State, whether in a civil or criminal proceeding, notwithstanding that the High Court has refused to give a certificate under clause (1) of article 93.

(2) The Supreme Court may grant special leave to appeal from any judgment, decree or final order of a civil court in any State specified in Part I or Part II of the First Schedule in cases where the provisions of article 93 do not apply.

94-B. The Supreme Court may grant special leave to appeal from an order of conviction or sentence made, passed, or confirmed in any criminal proceedings by any court of final jurisdiction in a State* specified in Part I or Part II of the First Schedule, if the Supreme Court is satisfied that there has been a grave miscarriage of justice by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise.

APPENDIX B

PROCEDURE IN FINANCIAL MATTERS

77. (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part of this Constitution referred to as the "annual financial statement".

*Note: The committee felt that even the States specified in Part III of the First Schedule might well be included in this article in view of the principle adopted in the provision in the fundamental rights that no person shall be deprived of his life or personal liberty without due process of law which would apply to all citizens whether in States specified in Parts I and II or in States specified in Part III of the First Schedule.

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of India; and

(b) the sums required to meet other expenditure proposed to be made from the revenues of India;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of India—

(a) the emoluments and allowances of the President and other expenditure relating to his office;

(b) the emoluments and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debts;

(d) the salaries, allowances and pensions payable to or in respect of judges of the Supreme Court, and the pensions payable to or in respect of judges of the Federal Court or of any High Court which immediately before the commencement of this Constitution exercised jurisdiction within any of the territories of the States specified in Parts I and II of the First Schedule;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

APPENDIX C

95. (1) If in the course of any proceedings, civil or criminal, in a High Court in any State for the time being specified in Part III of the First Schedule, a substantial question of law as to the interpretation of any law of Parliament or of the Legislature of any State other than such State arises, the High Court may draw up a statement of the case with particular reference to such question, and refer such question to the Supreme Court for its opinion.

(2) The Supreme Court may, where any such High Court refuses to state a case under clause (1), require a case to be so stated and may return any case stated under this article in order that further facts may be stated therein.

(3) Subject to such rules as the Supreme Court may make in this behalf, the Supreme Court shall, after such hearing as it thinks fit, transmit its opinion on the question so referred to the High Court by which such reference was made.

December 13, 1947

Present: (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Shri K. M. Munshi; (4) Shri N. Madhava Rao.

In attendance: (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 12th December, 1947.

It was decided that for clause (b) of the Explanation to sub-clause (2) of clause 46 and of the Explanation to sub-clause (4) of clause 51-C as previously settled by the committee, the following clause should be substituted :

(b) he is a Minister for any State specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of such Legislature, and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

The committee was of opinion that for paragraph (d) of sub-clause (3) of clause 77, as shown in Appendix B to those minutes, the following paragraph should be substituted, namely :

(d) (i) the salaries, allowances and pensions payable to or in respect of judges of the Federal Court ;
 (ii) the pensions payable to or in respect of judges of the Federal Court ;
 (iii) the pensions payable for service in any part of the territory of India to or in respect of judges of any High Court which immediately before the commencement of this Constitution exercised jurisdiction within any area then included in the States specified in Parts I and II of the First Schedule.

A question was raised as to whether the salaries and allowances payable to or in respect of judges of the High Courts should be also charged on the revenues of India. After discussion it was decided that it would not be necessary to make such provision if a minimum salary was provided for the judges of the High Courts in the Constitution. It was accordingly decided that it should be provided in the Constitution that the salary of the Chief Justice of a High Court in any State specified in Part I or Part II of the First Schedule should not be less than four thousand rupees per mensem and that the salary of any other judge of such High Court should not be less than three thousand five hundred rupees per mensem.

The committee was further of opinion that the salary of the Chief Justice of the Supreme Court should be specified in the Second Schedule as five thousand rupees per mensem, and the salary of other judges of that court should be specified in that Schedule as four thousand five hundred rupees per mensem.

Clauses 93, 94, 94-A and 94-B, as shown in Appendix A to those minutes were further revised, and it was agreed that these clauses should be replaced by clauses 93, 94 and 94-A as shown in Appendix A to these minutes.

Clause 95, as shown in Appendix C to those minutes, was further revised as shown in Appendix A to these minutes.

2. The committee thereafter resumed consideration of the Draft Constitution :

Clauses 96 and 97 : These two clauses were revised as shown in Appendix B to these minutes.

Clauses 98, 99 and 100 : It was decided that these three clauses should

be replaced by clauses 98, 99 and 100 as shown in Appendix B to these minutes.

Clause 101 : This clause was revised as shown in Appendix B to these minutes.

Clauses 102 to 105 : It was decided that these clauses should be replaced by clauses 102, 103, 104 and 105 as shown in Appendix B to these minutes.

Clauses 106 to 109 : These clauses were agreed to by the committee subject to formal changes as shown in Appendix B to these minutes.

The committee then considered the provisions relating to the High Courts in the Provinces in Chapter VII of Part V of the Draft Constitution.

Clause 163 : This clause was revised as shown in Appendix B to these minutes.

3. The committee thereafter adjourned till 11 A.M. on the 14th December, 1947.

APPENDIX A

93. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in a civil or criminal proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the High Court has not given such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court—

(i) on the ground that any such question as aforesaid has been wrongly decided, and

(ii) on any ground on which that party could have appealed without special leave to the Supreme Court if no such certificate had been given, and

(iii) with the leave of the Supreme Court on any other ground as well.

Explanation : In this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

94. (1) Subject to the provisions of any law made in this behalf by Parliament, an appeal shall lie to the Supreme Court from a judgment, decree or final order of a High Court in a State specified in Part I or Part II of the First Schedule—

(a) if the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and where the judgment, decree or final order appealed from affirms the decision of the court immediately below, the appeal involves some substantial question of law; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.

(2) Notwithstanding anything contained in article 93, any party appealing to the Supreme Court under clause (1) may take as one of the grounds in such appeal the

ground that the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided.

94-A. The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order, whether in a civil or other proceeding of any court in any State specified in Part I or Part II of the First Schedule, in cases where the provisions of article 93 do not apply:

Provided that the Supreme Court shall not grant such special leave to appeal from any order of conviction or sentence made, passed or confirmed in any criminal proceeding unless the Supreme Court is satisfied that there has been a grave miscarriage of justice by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise.

95. (1) If in the course of any proceeding, civil or criminal, in a High Court in any State for the time being specified in Part III of the First Schedule, any question as to the applicability or interpretation of any law of Parliament or of the Legislature of any State other than such State, which is material for the determination of any issue in such proceeding, arises, the High Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case with particular reference to such question with its own opinion thereon and refer such question to the Supreme Court for opinion.

(2) The Supreme Court may, where any such High Court refuses to state a case under clause (1), require a case to be so stated.

(3) When a case is so stated either under clause (1) or under clause (2), the High Court shall stay all proceedings until the opinion of the Supreme Court is received.

(4) The Supreme Court shall, after giving the parties an opportunity of being heard, decide the question so referred, and shall cause a copy of its opinion to be transmitted to the High Court and such High Court shall on receipt thereof proceed to dispose of the case in conformity with the opinion of the Supreme Court.

(5) The Supreme Court may at any stage return any case stated under this article in order that further facts may be stated therein.

APPENDIX B

96. (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Central Legislative List as Parliament may by law confer.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

97. Without prejudice to the powers that may for the time being be vested in this behalf in other courts, the Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III of this Constitution throughout the territory of India.

98. The law declared by the Supreme Court shall, so far as applicable, be recognised as binding on, and shall be followed by, all courts within the territory of India.

99. All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

100. (1) The Supreme Court in the exercise of its jurisdiction may pass any decree or make any order as is necessary for doing complete justice in any cause

or matter pending before it, and any decree passed or order made by the Supreme Court shall be executable throughout the territory of India.

(2) The Supreme Court shall, as respects the whole of the territory of India, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court, which any High Court in the States specified in Parts I and II of the First Schedule has power to make as respects the territory within its jurisdiction.

(3) The Supreme Court may for the execution of any decree passed or order made by it direct the issue of such process as may be prescribed by rules made in this behalf by it.

101. (1) It shall be lawful for the President to refer to the Supreme Court for hearing or consideration any matter as the President shall think fit, and the Supreme Court shall thereupon hear or consider the same and report to the President thereon.

(2) Without prejudice to the generality of the foregoing provision, the President may, notwithstanding anything contained in clause (i) of the proviso to article 92, refer a dispute of the kind mentioned in the said clause to the Supreme Court for decision, and the Supreme Court shall thereupon after such hearing as it thinks fit decide the same and report to the President thereon.

(3) No report shall be made under clause (1) or clause (2) of this article save in accordance with an opinion delivered in open court with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

102. (1) The Supreme Court may from time to time make rules of court for regulating generally the practice and procedure of the court including—

- (a) rules as to the persons practising before the court,
- (b) rules as to the time within which appeals to the court are to be entered,
- (c) rules as to the costs of and incidental to any proceedings in the court,
- (d) rules as to the fees to be charged in respect of proceedings therein, and
- (e) rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this article may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges:

Provided that all references under article 101 shall be heard by the full court.

(3) Subject to the provisions of any rules of the court, the Chief Justice shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose.

(4) No judgment shall be delivered by the Supreme Court save in open court and with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

103. Parliament may by law make provision of conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

104. The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.

105. References in any provision of this Chapter of this Constitution to a High

Court in, or exercising jurisdiction in, a State specified in Part III of the First Schedule shall, unless a contrary intention appears, be construed as references to any court which the President may, after communication with the Ruler of the State, declare to be a High Court for the purposes of that provision.

CHAPTER V—AUDITOR-GENERAL OF INDIA

106. (1) There shall be an Auditor-General of India, who shall be appointed by the President and shall only be removed from office in like manner and on like grounds as a judge of the Supreme Court.

(2) The salary, allowances and other conditions of service of the Auditor-General shall be such as may be determined by Parliament by law and until they are so determined shall be as specified in the Second Schedule:

Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(4) The salary, allowances and pension payable to or in respect of an Auditor-General shall be charged on the revenues of India, and the salaries, allowances and pensions payable to or in respect of members of his staff shall be paid out of those revenues.

107. The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Government of India and of the Government of the States as are or may be prescribed by or under any law made by Parliament.

Explanation: In this article the expression "law made by Parliament" includes any existing law for the time being in force in the territory of India.

108. The accounts of the Government of India shall be kept in such form as the Auditor-General of India may, with the approval of the President, prescribe and, in so far as the Auditor-General of India may, with the like approval, give any directions with regard to the methods or principles in accordance with which any accounts of the Government of any State ought to be kept, it shall be the duty of the Government of the State to cause accounts to be kept accordingly.

109. The reports of the Auditor-General of India relating to the accounts of the Government of India shall be submitted to the President, who shall cause them to be laid before Parliament.

CHAPTER VII—THE HIGH COURTS IN THE STATES

163. (1) For the purposes of this Constitution the following courts shall, in relation to the territories within the States for the time being specified in Parts I and II of the First Schedule, be deemed to be High Courts, that is to say—

(a) the High Courts in Calcutta, Madras, Bombay, Allahabad, Patna and Nagpur, the High Court of East Punjab and the Chief Court in Oudh;

(b) any other court in any of these States constituted or re-constituted under this Chapter as a High Court; and

(c) any other court in any of these States which may be declared by the appropriate legislature by law to be a High Court for the purposes of this Constitution:

Provided that if provision is made by the appropriate legislature for the establishment of a High Court to replace any court or courts mentioned in this clause,

then, as from the establishment of the new court, this article shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.

(2) The provisions of this Chapter shall apply to every High Court in the territories of the States for the time being specified in Parts I and II of the First Schedule.

December 14, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Shri K. M. Munshi; (4) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary.

1. The committee considered the minutes of the meeting held on the 13th December, 1947.

Clauses 93, 94, 94-A and 95 were further revised by the committee as shown in the Appendix to these minutes.

Clause 96 : No change was made in this clause.

Clause 97 : No change was made in this clause by the committee but it was decided that a foot-note should be added to this clause as shown in the Appendix to these minutes.

Clause 98 : It was decided that the words "so far as applicable" should be omitted from this clause. This clause as revised is shown in the Appendix.

Clauses 99, 100 and 101 : These clauses were further revised and re-numbered as shown in the Appendix to these minutes.

Clause 102 : This clause was slightly revised as shown in the Appendix to these minutes.

Clause 103 : No change was made in this clause.

Clause 104 : The committee was of opinion that a provision for the fixation of the salaries, allowances and pensions of the officers and the servants of the Supreme Court by the Chief Justice in consultation with the President should be made in this clause. This clause as revised by the committee is shown in the Appendix to these minutes.

Clause 105 : This clause was further revised by the committee as shown in the Appendix to these minutes. It was decided to consider this clause further after clauses 172 and 189 had been considered.

Clauses 106 to 109 : No change was made in these clauses.

2. The committee was of opinion that clause 87 as shown in Appendix A to the minutes of the meeting held on the 10th December, 1947 should be revised further so as to add to the said clause the following sub-clause, namely:

(7) No person who has held office as a judge of the Supreme Court shall practise in any court or before any authority or person within the territory of India.

3. The committee then adjourned till 11 A.M. on the 15th December, 1947.

APPENDIX

93. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

(2) Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court—

(i) on the ground that any such question as aforesaid has been wrongly decided, and

(ii) on any ground on which that party could have appealed without special leave to the Supreme Court if no such certificate had been given, and

(iii) with the leave of the Supreme Court on any other ground as well.

Explanation: For the purposes of this article, the expression "final order" includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

94. (1) Subject to the provisions of any law made in this behalf by Parliament, an appeal shall lie to the Supreme Court from a judgment, decree or final order in a civil proceeding of a High Court in a State specified in Part I or Part II of the First Schedule—

(a) if the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees, or the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and where the judgment, decree or final order appealed from affirms the decision of the court immediately below, the appeal involves some substantial question of law; or

(b) if the High Court certifies that the case is a fit one for appeal to the Supreme Court.

(2) Notwithstanding anything contained in article 93, any party appealing to the Supreme Court under clause (1) may take as one of the grounds in such appeal the ground that the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided.

94-A. The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any proceeding of any court in a State specified in Part I or Part II of the First Schedule, in cases where the provisions of article 93 do not apply:

Provided that the Supreme Court shall not grant such special leave to appeal from any order of conviction or sentence made, passed or confirmed in any criminal proceeding unless the Supreme Court is satisfied that there has been a grave miscarriage of justice by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise.

95. (1) If in the course of any civil, criminal or other proceeding in a High Court in any State specified in Part III of the First Schedule, any question as to the applicability or interpretation of any law of Parliament or of the Legislature of any State

other than such State, which is material for the determination of any issue in such proceeding, arises, the High Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case with particular reference to such question with its own opinion thereon and refer such question to the Supreme Court for opinion.

(2) The Supreme Court may, where any such High Court refuses to state a case under clause (1), require case to be so stated.

(3) When a case is so stated either under clause (1) or under clause (2), the High Court shall stay all proceedings until the opinion of the Supreme Court is received.

(4) The Supreme Court shall, after giving the parties an opportunity of being heard, decide the question so referred, and shall cause a copy of its opinion to be transmitted to the High Court and such High Court shall on receipt thereof proceed to dispose of the case in conformity with the opinion of the Supreme Court.

(5) The Supreme Court may at any stage return any case stated under this article in order that further facts may be stated therein.

Explanation : For the purposes of this article, the expression "High Court" means the highest court of civil or criminal appeal.

*97. Without prejudice to the powers that may for the time being be vested in this behalf in other courts, the Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III of this Constitution throughout the territory of India.

98. The law declared by the Supreme Court shall be recognised as binding on, and shall be followed by, all courts within the territory of India.

99. (1) The Supreme Court in the exercise of its jurisdiction may pass any decree or make any order as is necessary for doing complete justice in any cause or matter pending before it, and any decree passed or order made by the Supreme Court shall be enforceable throughout the territory of India.

(2) The Supreme Court shall, as respects the whole of the territory of India, have power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of court, which any High Court in the States specified in Parts I and II of the First Schedule has power to make as respects the territory within its jurisdiction.

(3) The Supreme Court may for the enforcement of any decree passed or order made by it direct the issue of such appropriate process as may, subject to any law made by Parliament, be prescribed by rules made in this behalf by the Court.

100. (1) It shall be lawful for the President to refer to the Supreme Court for hearing or consideration any matter as the President shall think fit, and the Supreme Court shall thereupon hear or consider the same and report to the President thereon.

(2) The President may, notwithstanding anything contained in clause (i) of the proviso to article 92, refer a dispute of the kind mentioned in the said clause to the Supreme Court for decision, and the Supreme Court shall thereupon, after giving the parties an opportunity of being heard, decide the same and report to the President thereon.

*Some members of the committee felt that there is no reason why this provision should apply merely for the purposes of enforcement of the fundamental rights in Part III of this Constitution and the Supreme Court should not have powers to issue such directions or orders for other purposes as well throughout the territory of India.

(3) No report shall be made under clause (1) or clause (2) of this article save in accordance with an opinion delivered in open court.

(4) No such report shall be made save with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

101. All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

102. (1) The Supreme Court may from time to time make rules of court for regulating generally the practice and procedure of the court including—

- (a) rules as to the persons practising before the court,
- (b) rules as to the time within which appeals to the court are to be entered,
- (c) rules as to the costs of and incidental to any proceedings in the court,
- (d) rules as to the fees to be charged in respect of proceedings therein, and
- (e) rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this article may fix the minimum number of judges who are to sit for any purpose, so however that no case shall be decided by less than three judges:

Provided that all references under article 100 shall be heard by the full court.

(3) Subject to the provisions of any rules of the court, the Chief Justice shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose.

(4) No judgment shall be delivered by the Supreme Court save in open court.

(5) No judgment shall be delivered by the Supreme Court save with the concurrence of the majority of the judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

104. (1) The salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court shall be fixed by the Chief Justice of the court in consultation with the President.

(2) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of these revenues.

105. References in any provision of this Chapter of this Constitution to a High Court in, or exercising jurisdiction in, a State for the time being specified in Part III of the First Schedule shall, unless a contrary intention appears, be construed as references to any court which the President may, upon being satisfied after consultation with the Ruler of the State that such court is a court comparable to any of the High Courts in the States for the time being specified in Parts I and II of the First Schedule, declare to be a High Court for the purposes of that provision.

December 15, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalaswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the

14th December, 1947. It was decided that the new sub-clause (7) proposed for addition to clause 87 as shown in paragraph 2 of the said minutes should be further revised as follows, namely:

(7) No person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

Clause 94-A as shown in the Appendix to those minutes was further revised as shown in Appendix A to these minutes.

The footnote added to clause 97 as shown in the Appendix to those minutes was further revised as follows:

*Some members of the committee felt that there was no reason why this provision should apply merely for the purposes of enforcement of the fundamental rights in Part III of this Constitution and why the Supreme Court should not have powers to issue such directions or orders for other purposes as well throughout the territory of India.

It was decided that clauses 98, 99, 100 and 102 as shown in the Appendix to those minutes should be further revised as shown in Appendix A to these minutes.

It was decided that clause 105 should be further considered along with clauses 172 and 189 of the Draft Constitution.

2. The committee then considered clause 163 as shown in Appendix B to the minutes of the meeting held on the 13th December, 1947, and the said clause as shown in that Appendix was agreed to.

3. The committee then resumed consideration of the Draft Constitution.

Clauses 164, 165 and 166: These clauses were revised as shown in Appendix B to these minutes.

Clause 166-A: It was decided that a new clause 166-A as shown in Appendix B to these minutes should be inserted after clause 166 for enabling the Chief Justice or the acting Chief Justice of a High Court to requisition at any time the services of retired judges of the High Court.

Clauses 167, 168, 169 and 170: It was decided that these clauses should be revised as shown in Appendix B to these minutes.

Shri Alladi Krishnaswami Ayyar was of opinion that the words "and the law administered in" in sub-clause (1) of clause 167 are unnecessary and should be omitted. The committee, however, by a majority decided to retain these words.

4. The committee then adjourned till 11 A.M. on the 16th December, 1947.

APPENDIX A

94-A. The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any proceeding of any court in a State specified in Part I or Part II of the First Schedule, in cases where the provisions of article 93 do not apply:

Provided that no such special leave shall be granted to appeal from any order

of conviction or sentence made, passed or confirmed in any criminal proceeding unless the Supreme Court is satisfied that there has been a grave miscarriage of justice by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise.

98. The law declared by the Supreme Court shall be binding on all courts within the territory of India.

99. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament.

(2) Subject to the provisions of any law made in this behalf by Parliament the Supreme Court shall, as respects the whole of the territory of India, have such power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of that court, as the High Courts in Calcutta, Madras and Bombay have power at the date of the commencement of this Constitution to make as respects the territory within their respective jurisdictions.

100. (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that court for consideration and the court may, after such hearing as it thinks fit, report to the President thereon.

(2) The President may, notwithstanding anything contained in clause (i) of the proviso to article 92, refer a dispute of the kind mentioned in the said clause to the Supreme Court for decision, and the Supreme Court shall thereupon, after giving the parties an opportunity of being heard, decide the same and report to the President thereon.

(3) No report shall be made under clause (1) or clause (2) of this article save in accordance with an opinion delivered in open court.

(4) No such report shall be made save with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion.

102. (1) The Supreme Court may from time to time with the approval of the President make rules for regulating generally the practice and procedure of the court including—

(a) rules as to the persons practising before the court,

(b) rules as to the time within which appeals to the court are to be entered,

(c) rules as to the costs of and incidental to any proceedings in the court,

(d) rules as to the fees to be charged in respect of proceedings therein,

(e) rules as to the granting of bail,

(f) rules as to stay of proceedings, and

(g) rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this article may fix the minimum number of judges who are to sit for any purpose:

Provided that all references under clause (1) of article 100 shall be heard by *[the full court].

(3) Subject to the provisions of any rules made under this article, the Chief

*[] The committee was of the view that the words "the full court" in the proviso to sub-clause (2) of clause 102 should be replaced by the words "not less than five judges".

Justice shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose.

(4) No judgment shall be delivered by the Supreme Court save in open court.

(5) No judgment shall be delivered by the Supreme Court save with the concurrence of the majority of the judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting judgment.

APPENDIX B

164. (1) Every High Court shall be a court of record and shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

Provided that the judges so appointed together with any additional judges appointed by the President in accordance with the following provisions of this Chapter shall at no time exceed in number such maximum as the President may by order fix in relation to that court.

(2) Every judge of a High Court in any State specified in Part I or Part II of the First Schedule of this Constitution shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of the Supreme Court, the Governor or the Lieutenant Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State:

Provided that—

- (a) a judge may, by writing under his hand addressed to the Governor or the Lieutenant Governor, as the case may be, resign his office;
- (b) a judge may be removed from his office by the President in the manner provided in clause (4);
- (c) the office of the judge shall be vacated by his being appointed by the President to be a judge of the Supreme Court or of any other High Court.
- (3) A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India and—
 - (a) has held for at least ten years a judicial office in any State specified in Part I or Part II of the First Schedule, or
 - (b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation: For the purpose of this clause—

- (a) in computing the period during which a person has been an advocate of a High Court, any period during which a person held judicial office after he became an advocate, shall be included;
- (b) in computing the period during which a person has held judicial office in a State specified in Part I or Part II of the First Schedule or been an advocate of a High Court, any period before the commencement of this Constitution during which he held judicial office in any Governor's or Chief Commissioner's Province of the Dominion of India or Pakistan or been an advocate of any High Court in any such provinces, as the case may be, shall be included.
- (4) A judge of the High Court shall not be removed from his office except by an order of the President passed on an address supported by not less than two-thirds of the members present and voting being presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of address and for the investigation and proof of misbehaviour and incapacity of a judge under the last preceding clause.

(6) Every person appointed to be a judge of a High Court in a State shall, before he enters upon his office, make and subscribe before the Governor or the Lieutenant Governor, as the case may be, of such State or some person appointed by the Governor or the Lieutenant Governor, a declaration according to the form set out in that behalf in the Third Schedule.

(7) No person who has held office—

(a) as a judge of a High Court shall plead or act in any court or before any authority within the territory of India;

(b) as an additional judge or temporary judge shall, if he has been recruited from the bar, plead or act in any court or before any authority within the territory of India.

165. The judges of the several High Courts shall be entitled to such salaries and allowances, and to such rights in respect of leave and pensions, as may from time to time be fixed by or under law made by the Legislature of the State, and until they are so fixed, shall be entitled to such salaries, allowances and rights in respect of leave of absence or pension as are specified in the Second Schedule:

Provided that the salary of the Chief Justice of a High Court shall not be less than four thousand rupees per month and the salary of any other judge of a High Court shall not be less than three thousand five hundred rupees per month:

Provided further that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

166. (1) If the office of Chief Justice of a High Court becomes vacant or if any such Chief Justice is, by reason of absence, or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by the President to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed his duties, as the case may be, be performed by such one of the other judges of the court as the President may appoint for the purpose.

(2) If the office of any other judge of a High Court becomes vacant, or if any such judge is appointed to act temporarily as a Chief Justice, or is, by reason of absence, or for any other reason, unable to perform the duties of his office, the President may appoint a person duly qualified for appointment as a judge to act as a judge of that court, and the person so appointed shall, unless the President thinks fit to revoke his appointment be deemed to be a judge of that court until some person appointed by the President to the vacant office has entered on the duties thereof or until the permanent judge has resumed his duties.

(3) If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court, it appears to the President that the number of the judges of the court should be for the time being increased, the President may, subject to the foregoing provisions of this Chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

166-A. Notwithstanding anything contained in this Chapter, any person who has been a judge of a High Court may, at any time, after retiring from that office, upon the written request of the Chief Justice or the acting Chief Justice of that court, attend at the sittings of the court for such period as may be specified in the request; and while so attending, he shall possess the powers and privileges and shall discharge the duties of a judge of that court.

167. (1) Subject to the provisions of this Constitution and to any provisions of any law of the appropriate legislature made by virtue of the powers conferred on

that legislature by this Constitution, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of this Constitution :

Provided that nothing in this clause shall restrict the exercise by the High Court of any original jurisdiction in any matter concerning the revenue or concerning any act ordered or done in the collection thereof.

(2) Every High Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, throughout the areas subject to its appellate jurisdiction.

168. (1) Every High Court shall have superintendence over all courts within the territories in relation to which it exercises jurisdiction.

(2) The High Court may—

(a) call for returns from such courts;

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff, attorneys, advocates, pleaders and all clerks and officers of such courts:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) of this article shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor or the Lieutenant-Governor of the State in which such High Court has its principal seat.

169. (1) If on an application made in accordance with the provisions of this article, a High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any law made by Parliament or of any law made by the Legislature of any State specified in Part I or Part II of the First Schedule, it shall exercise that power.

(2) An application for the purposes of this article shall not be made, except in relation to a law made by Parliament, by the Advocate-General for India and, in relation to a law made by the Legislature of a State, by the Advocate-General for India or the Advocate-General for the State.

(3) Nothing in this article shall prevent the High Court from transferring a case of the nature specified in clause (1) to itself for trial on the application of any party if the High Court so thinks fit:

Provided that no such transfer shall be made except after giving notice—

(a) where the case involves the question of validity of any law made by Parliament, to the Advocate-General of India; and

(b) where the case involves the question of validity of any law made by the Legislature of any State, to the Advocate-General of the State.

170. (1) The salaries, allowances and pensions payable to or in respect of the officers and servants of a High Court shall be fixed by the Chief Justice of the Court in consultation with the Governor or the Lieutenant-Governor of the State in which the High Court has its principal seat.

(2) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of officers and servants of the court, and the

salaries and allowances of the judges of the Court, shall be charged upon the revenues of the State within which the High Court has its principal seat, and any fees or other moneys taken by the court shall form part of those revenues.

December 16, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Gopalaswami Ayyangar; (3) Shri Alladi Krishnaswami Ayyar; (4) Shri K. M. Munshi; (5) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 15th December, 1947.

It was decided that clause 164, as shown in Appendix B to those minutes should be revised and split up into five clauses 164, 164-A, 164-B, 164-C and 164-D as shown in Appendix A to these minutes.

It was decided that clause 167, as shown in Appendix B to those minutes should be revised and split up into two separate clauses 167 and 167-A as shown in Appendix A to these minutes.

It was also decided that clauses 168 and 169 as shown in Appendix B to those minutes should be revised as shown in Appendix A to these minutes.

2. The committee then resumed consideration of the Draft Constitution:

Clauses 171, 172 and 173 : It was decided that these clauses should be replaced by clauses 171, 172 and 173 as shown in Appendix B to these minutes.

Clauses 174 and 175 : It was also decided that these clauses should be revised as shown in Appendix B to these minutes.

3. The committee thereafter adjourned till 11 A.M. on the 17th December, 1947.

APPENDIX A

164. Every High Court shall be a court of record and shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

Provided that the judges so appointed together with any additional judges appointed by the President in accordance with the following provisions of this Chapter shall at no time exceed in number such maximum as the President may by order fix in relation to that court.

164-A. (1) Every judge of a High Court in any State specified in Part I or Part II of the First Schedule shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor or the Lieutenant Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years or such higher age not

exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State :

Provided that—

- (a) a judge may, by writing under his hand addressed to the Governor or the Lieutenant Governor, as the case may be, resign his office;
 - (b) a judge may be removed from his office by the President in the manner provided in article 164-D of this Constitution;
 - (c) the office of a judge shall be vacated by his being appointed by the President to be a judge of the Supreme Court or of any other High Court.
- (2) A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India and—
- (a) has held for at least ten years a judicial office in any State and there is a High Court exercising jurisdiction in relation to such State; or
 - (b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation I : For the purpose of this clause—

- (a) in computing the period during which a person has been an advocate of a High Court, any period during which a person held judicial office after he became an advocate, shall be included;
- (b) in computing the period during which a person has held judicial office in a State specified in Part I or Part II of the First Schedule or been an advocate of a High Court, any period before the commencement of this Constitution during which he held judicial office in any area which was comprised before the fifteenth day of August, 1947, within British India under the Government of India Act, 1935, or been an advocate of any High Court in any such area, as the case may be, shall be included.

Explanation II : In this clause, a reference to a High Court in relation to any State specified in Part III of the First Schedule shall be construed as a reference to any court in such State which the President may declare to be a High Court for the purpose of this clause.

164-B. (1) A judge of a High Court shall not be removed from his office except by an order of the President passed on an address supported by not less than two-thirds of the members present and voting being presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

(2) Parliament may by law regulate the procedure for the presentation of address and for the investigation and proof of misbehaviour and incapacity of a judge under the last preceding clause.

164-C. Every person appointed to be a judge of a High Court in a State shall, before he enters upon his office, make and subscribe before the Governor or the Lieutenant Governor, as the case may be, of such State or before some person appointed in that behalf by the Governor or the Lieutenant Governor, a declaration according to the form set out for the purpose in the Third Schedule.

164-D. No person who has held office—

- (a) as a judge of a High Court shall plead or act in any court or before any authority within the territory of India;
- (b) as an additional judge or temporary judge of a High Court shall, if he has been recruited from the bar, plead or act in any court or before any authority within the territory of India.

167. (1) Subject to the provisions of this Constitution and to any provisions of any law of the appropriate legislature, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make

rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction of any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

(2) For the purposes of this article, the expression "appropriate legislature" means—

- (a) where the jurisdiction or power of a High Court in a State in which it has its principal seat relates to any matter enumerated in the Central Legislative List, Parliament;
- (b) where such jurisdiction or power relates to a matter enumerated in the State Legislative List, the Legislature of the State;
- (c) where such jurisdiction or power relates to a matter enumerated in the Concurrent Legislative List, either Parliament or the Legislature of the State.

167-A. Every High Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, throughout the territories in relation to which it exercises jurisdiction.

168. (1) Every High Court shall have superintendence over all courts throughout the territories in relation to which it exercises jurisdiction.

(2) The High Court may—

- (a) call for returns from such courts;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction, or, subject to the provisions of article 169 of this Constitution, withdraw any such suit or appeal from any such court to itself;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) of this article shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor or the Lieutenant Governor of the State in which such High Court has its principal seat.

169. If the High Court is satisfied that a case pending in a court subordinate to it, being a case which the High Court has power to withdraw to itself for trial, involves or is likely to involve the question of the validity of any law made by Parliament or of any law made by the Legislature of any State specified in Part I or Part II of the First Schedule, it may withdraw the case to itself and dispose of the same after giving notice—

- (a) where the case involves the question of validity of any law made by Parliament, to the Advocate-General for India; and
- (b) where the case involves the question of validity of any law made by the Legislature of any State, to the Advocate-General for the State:

Provided that where an application for the purpose of exercising the power of withdrawal of any case under this article is made in relation to a law made by Parliament by the Advocate-General for India and in relation to a law made by the

Legislature of a State by the Advocate-General for India or the Advocate-General for the State, the High Court shall, if so satisfied, exercise such power.

APPENDIX B

171. (1) The Legislature of a State specified in Part I or Part II of the First Schedule may, by law, constitute a High Court for the State or any part thereof or re-constitute in like manner any existing High Court for that State or for any part thereof, or where there are two High Courts in that State, amalgamate those courts.

(2) Where any court is re-constituted, or two courts are amalgamated, as aforesaid, the law made by the Legislature of the State shall provide for the continuance in their respective offices all such of the existing judges, officers and servants of the court or courts as may be deemed necessary, and for the carrying on before the re-constituted court or the new court of all pending matters, and may contain such other provision as may appear to be necessary by reason of the re-constitution or amalgamation.

172. (1) The President may, by order, extend the jurisdiction of a High Court to any area within the territory of India not forming part of the area in relation to which it exercises jurisdiction, and the High Court shall thereupon have the same jurisdiction in relation to the new area as it has in relation to the area in relation to which it exercises jurisdiction.

(2) The President may, by order, extend the jurisdiction of a High Court in a State specified in Part I or Part II of the First Schedule to any other State specified in that schedule if resolutions to that effect are passed by the Legislatures of the States concerned and the High Court shall thereupon have the same jurisdiction in relation to the State to which its jurisdiction is extended as it has in relation to the State in relation to which it exercises jurisdiction.

(3) Nothing in this article affects the provisions of any law or letters patent in force immediately before the commencement of this Constitution, empowering any High Court to exercise jurisdiction in relation to more than one State or in relation to a State and an area not forming part of any State.

(4) Where a High Court exercises jurisdiction in relation to any area or areas outside the State in which it has its principal seat, nothing in this Constitution shall be construed—

(a) as empowering the Legislature of the State in which the court has its principal seat to increase, restrict or abolish that jurisdiction, or

(b) as preventing the Legislature having power to make laws in that behalf for any such area from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

173. Where a High Court exercises jurisdiction in relation to more than one State or in relation to a State and an area not forming part of the State, references in this Chapter to the Governor or the Lieutenant-Governor in relation to the judges of a High Court and references to the revenues of the State shall be construed as references to the Governor or the Lieutenant-Governor and the revenues of the State in which the court has its principal seat, and the references to the approval by the Governor or the Lieutenant-Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor or the Lieutenant-Governor of the State in which the subordinate court is situated, or if it is situated in an area not forming part of any State specified in Part I or Part II of the First Schedule, by the President.

CHAPTER IX—AUDITOR-GENERALS FOR THE STATES

174. (1) The Legislature of a State specified in Part I of the First Schedule may by law provide for the appointment of an Auditor-General for the State and when such provision has been made an Auditor-General for that State may be appointed by the Governor in his discretion and the Auditor-General so appointed shall only be removed from office in like manner and on the like grounds as a judge of the High Court of the State:

Provided that no appointment of an Auditor-General in a State shall be made until the expiration of at least three years from the date of the publication after assent of the Act of the Legislature of such State by which provision is made for the appointment of an Auditor-General of that State.

(2) Every such Act shall prescribe the conditions of service of the Auditor-General and the duties which shall be performed and the powers which shall be exercised by the Auditor-General in relation to the accounts of the State and shall declare the salary, allowances and pension payable to or in respect of the Auditor-General to be charged on the revenues of the State.

(3) The Auditor-General of the State shall be eligible for appointment as Auditor-General of India or as Auditor-General for any other State specified in Part I of the First Schedule but not for any other appointment either under the Government of India or under the Government of any State after he has ceased to hold his office.

(4) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-General shall be paid out of the revenues of the State.

(5) Nothing in this section shall derogate from the power of the Auditor-General of India to give such directions in respect to the accounts of the States specified in Part I of the First Schedule as are mentioned in article 108 of this Constitution.

175. The reports of the Auditor-General of India or of the State, as the case may be, relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

December 17, 1947

Present: (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Shri K. M. Munshi; (4) Maulavi Saiyid Muhammad Saadulla; (5) Shri N. Madhava Rao.

In attendance: (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

The committee considered the minutes of the meeting held on the 16th December, 1947.

Clause 164-A as shown in Appendix A to those minutes was further revised as shown in Appendix A to these minutes.

Further consideration of clause 167 as shown in Appendix A to those minutes was held over.

Clause 169 as shown in Appendix A to those minutes was further revised as shown in Appendix A to these minutes.

Clauses 171 and 172 as shown in Appendix B to those minutes were further revised as shown in Appendix A to these minutes.

The consideration of clause 173 as shown in Appendix B to those minutes was postponed till the next meeting.

It was decided that for sub-clause (4) of clause 174 as shown in Appendix B to those minutes, the following sub-clause should be substituted; namely :

(4) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-General of a State shall be fixed by the Auditor-General in consultation with the Governor of the State and shall be charged upon the revenues of the State.

2. It was also decided that for sub-clause (4) of clause 106 as shown in Appendix B to the minutes of the meeting held on the 13th December, 1947, the following sub-clause should be substituted, namely :

(4) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-General shall be fixed by the Auditor-General in consultation with the President and the salary, allowances and pension payable to or in respect of an Auditor-General and the salaries, allowances and pensions payable to or in respect of members of his staff shall be charged upon the revenues of India.

3. The committee was of opinion that clause 94-A as shown in Appendix A to the minutes of the meeting held on the 15th December, 1947 should be further revised as shown in Appendix B to these minutes.

The committee was further of opinion that clause 166 as shown in Appendix B to the minutes of the meeting held on the 15th December, 1947 should be further revised and split up into two clauses 166 and 166-A as shown in Appendix B to these minutes and clause 166-A as shown in Appendix B to the minutes of the meeting held on the 15th December, 1947 should be re-numbered as clause 166-B.

4. The committee was also of opinion that clause 105 as shown in the Appendix to the minutes of the meeting held on the 14th December, 1947 should be further revised as shown in Appendix B to these minutes.

5. The committee then adjourned till 11 A.M. on the 18th December, 1947.

APPENDIX A

164-A. (1) Every judge of a High Court in any State specified in Part I or Part II of the First Schedule shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor or the Lieutenant-Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State:

Provided that—

- (a) a judge may, by writing under his hand addressed to the Governor or the Lieutenant-Governor, as the case may be, resign his office;
- (b) a judge may be removed from his office by the President in the manner provided in article 164-D of this Constitution;

- (c) the office of the judge shall be vacated by his being appointed by the President to be a judge of the Supreme Court or of any other High Court.
- (2) A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India and—

- (a) has held for at least ten years a judicial office in any State in or for which there is a High Court; or
- (b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation I: For the purposes of this clause—

- (a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which a person held judicial office after he became an advocate;
- (b) in computing the period during which a person has held judicial office in a State specified in Part I or Part II of the First Schedule or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he held judicial office in any area which was comprised before the fifteenth day of August, 1947, within British India as defined by the Government of India Act, 1935, or been an advocate of any High Court in any such area, as the case may be.

Explanation II: In this clause, a reference to a High Court in relation to any State specified in Part III of the First Schedule shall be construed as a reference to any court in such State which the President may, in consultation with the Supreme Court, declare to be a High Court for the purposes of this clause.

169. If the High Court is satisfied that a case pending in a court subordinate to it involves or is likely to involve a question of the validity of any law made by Parliament or of any law made by the Legislature of any State for the time being specified in Part I or Part II of the First Schedule, it shall withdraw the case to itself and dispose of the same:

Provided that—

- (a) where the case involves a question of the validity of any law made by Parliament, the High Court shall not withdraw the case without giving notice to the Advocate-General for India unless an application for such withdrawal has been made by such Advocate-General; and
- (b) where the case involves a question of the validity of any law made by the Legislature of any State, the High Court shall not withdraw the case without giving notice to the Advocate-General for the State unless an application for such withdrawal has been made by such Advocate-General.

171. (1) The Legislature of a State for the time being specified in Part I or Part II of the First Schedule may, by law, constitute a High Court for the State or any part thereof or reconstitute in like manner any existing High Court for that State or for any part thereof, or where there are two High Courts in that State, amalgamate those courts.

(2) Where any court is reconstituted, or two courts are amalgamated, as aforesaid, the law made by the Legislature of the State shall provide for—

- (a) the continuance in their respective offices of all the existing judges of the court or courts and of such of the existing officers and servants of the court or courts as may be deemed necessary; and
- (b) the carrying on before the reconstituted court or the new court of all pending matters,

and may contain such other provision as may appear to be necessary by reason of the reconstitution or amalgamation.

172. (1) Parliament may, if satisfied that an agreement in that behalf has been made between the Governments concerned—

(a) extend the jurisdiction of a High Court in any State to any other State or to any area within the territory of India not forming part of the State in relation to which it exercises jurisdiction;

(b) exclude any State or area in relation to which a High Court exercises jurisdiction from the jurisdiction of such High Court.

(2) When the jurisdiction of a High Court has been so extended to any State or other area, the High Court shall have the same jurisdiction in relation to that State or area as it has in relation to any other area in respect of which it exercises jurisdiction.

(3) When any State or other area is so excluded from the jurisdiction of a High Court, the High Court shall cease to exercise jurisdiction in relation to such State or area.

(4) Nothing in this article affects the provision of any law or letters patent in force immediately before the commencement of this Constitution, empowering any High Court to exercise jurisdiction in relation to more than one State or in relation to a State and an area not forming part of any State.

172-A. Where a High Court exercises jurisdiction in relation to any area or areas outside the State in which it has its principal seat, nothing in this Constitution shall be construed—

(a) as empowering the Legislature of the State in which the court has its principal seat or the Legislature having power to make laws for any such area to abolish that jurisdiction;

(b) as empowering the Legislature of the State in which the court has its principal seat to increase or restrict that jurisdiction; or

(c) as preventing the Legislature having power to make laws in that behalf for any such area, save as provided in clause (a) of this article, from passing such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

APPENDIX B

94-A. The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any proceeding of any court or tribunal in a State specified in Part I or Part II of the First Schedule, in cases where the provisions of article 93 do not apply:

Provided that no such special leave shall be granted to appeal from any order of conviction or sentence made, passed or confirmed in any criminal proceeding unless the Supreme Court is satisfied that there has been a grave miscarriage of justice by a disregard of the forms of legal process or by some violation of the principles of natural justice or otherwise.

105. (1) References in articles 87 and 90 of this Chapter to a High Court in, or exercising jurisdiction in, a State for the time being specified in Part III of the First Schedule shall be construed as references to any court which the President may, upon being satisfied after consultation with the Supreme Court and the Ruler of the State that such court is a court comparable to any of the High Courts in the States for the time being specified in Parts I and II of that Schedule, declare to be a High Court for the purposes of those articles.

(2) References in articles 93 and 95 of this Chapter to a High Court in a State for the time being specified in Part III of the First Schedule shall be construed as references to the court of final jurisdiction in the State with regard to the proceeding in respect of which an appeal or reference is provided for in those articles.

166. (1) When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office of Chief Justice shall be performed by such one of the other judges of the court as the President may appoint for the purpose.

(2) (a) When the office of any other judge of a High Court is vacant or when any such judge is appointed to act temporarily as a Chief Justice, or is unable to perform the duties of his office by reason of absence or otherwise, the President may appoint a person duly qualified for appointment as a judge to act as a judge of that court.

(b) The person appointed shall, while so acting, be deemed to be a judge of the court.

(c) Nothing contained in this clause shall prevent the President from revoking any appointment made under this clause.

166-A. If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court, it appears to the President that the number of the judges of the court should be for the time being increased, the President may, subject to the foregoing provisions of this Chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

December 18, 1947

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Shri K. M. Munshi; (4) Maulavi Saiyid Muhammad Saadulla; (5) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 17th December, 1947.

Explanation II to sub-clause (2) of clause 164-A was further revised as follows:

Explanation II : In sub-clauses (a) and (b) of this clause, the reference to a High Court shall be construed as including a reference to a court in a State specified in Part III of the First Schedule which is a High Court for the purposes of articles 87 and 90 of this Constitution.

Clause 169, as shown in Appendix A to those minutes, was further revised as shown in the Appendix to these minutes.

The committee was of opinion that clause 172, as shown in Appendix A to those minutes, should be revised as shown in the Appendix to these minutes.

It was decided that clause 173 should be revised as shown in the Appendix to these minutes.

It was also decided that clause 94-A as shown in Appendix B to those minutes should be revised as shown in the Appendix to these minutes.

2. The committee then took into consideration the report of the *ad hoc*

Committee on Chief Commissioners' Provinces and discussed the two alternative drafts : one providing for the administration of the Chief Commissioners' Provinces, that is, the States specified in Part II of the First Schedule, by the President acting through a Chief Commissioner, or a Lieutenant-Governor, or the Governor or Ruler of a neighbouring State and leaving the future constitution of those States to be prescribed by order by the President, and the other containing detailed provisions so as to give effect to the recommendations of the said *ad hoc* committee. Further consideration of those provisions was postponed till the next meeting of the committee in January.

3. The committee then adjourned till 3 P.M. on the 19th January, 1948.

APPENDIX

94-A. The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any civil, criminal or other proceeding of any court or tribunal in a State specified in Part I or Part II of the First Schedule, in cases where the provisions of article 93 do not apply.

169. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, it shall withdraw the case to itself and dispose of the same.

Explanation : In this article, the reference to a High Court shall be construed as including a reference to a court of final jurisdiction in a State for the time being specified in Part III of the First Schedule with regard to the case so pending.

172. (1) Parliament may by law—

(a) extend the jurisdiction of a High Court to, or

(b) exclude the jurisdiction of a High Court from

any State other than, or any area not within, the State in which the court has its principal seat:

Provided that where the State or the area to or from which the jurisdiction of a High Court is to be extended or excluded is, or is within, a State which immediately before the commencement of this Constitution was exercising full jurisdiction in all civil or criminal matters, that is to say, a State for the time being specified in group 1 of Part III of the First Schedule, no Bill for the purpose shall be introduced in either House of Parliament except by Government and unless an agreement in that behalf has been concluded between the Governments of the States concerned and a copy of the agreement has been laid before the House of Parliament in which the Bill is introduced.

(2) Nothing in this article affects the operation of article 167 of this Constitution with regard to the jurisdiction of any existing High Court.

173. Where a High Court exercises jurisdiction in relation to more than one State or in relation to a State and an area not forming part of the State—

(a) references in this Chapter to the Governor or the Lieutenant-Governor in relation to the judges of a High Court shall be construed as references to the Governor or the Lieutenant-Governor of the State in which the court has its principal seat;

(b) the reference to the approval by the Governor or the Lieutenant-Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor or the Lieutenant-Governor or the Ruler of the State in which the subordinate court is situate

or if it is situate in an area not forming part of any State for the time being specified in Part I, Part II or Part III of the First Schedule, by the President; and

- (c) references to the revenues of the State shall be construed as references to the revenues of the State in which the court has its principal seat.

January 19, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary, (3) Shri Jugal Kishore Khanna, Deputy Secretary.

The committee examined the draft clauses of the Constitution so far considered and revised by the committee.

PART I

Clauses 1, 2 and 3 : These clauses were further revised as shown in the Appendix to these minutes.

PART II

No change was made in this Part.

PART III

Clause 8 : No change was made in this clause.

Clause 9 : It was decided that the words "any of" should be omitted from sub-clause (1) of this clause.

It was also decided that in clause 25 dealing with the rights to property, a provision for the saving of existing laws and for certain other purposes should be included.

Clause 11 : No change was made in this clause.

Clause 12 : A footnote was added to this clause as shown in the Appendix to these minutes.

Clause 13 : No change was made in this clause.

Clause 14 : A footnote was added to this clause as shown in the Appendix to these minutes.

Clause 15 : This clause was further revised as shown in the Appendix to these minutes.

Clause 15-A : No change was made in this clause.

Clause 16 : The footnote to this clause was revised as shown in the Appendix to these minutes.

Clause 17: This clause was slightly revised as shown in the Appendix to these minutes. It was decided that the provisions contained in the three provisos to the original clause should be included (as separate independent clauses or otherwise) in the Chapter dealing with relations between different States in the Constitution. In the third proviso to the original clause 17, the expression "the Federal Parliament" was a mistake and it should be corrected by substituting therefor the expression "any unit"; and the words "among the units" which follow should be replaced by the words "with that unit".

Clauses 18 and 19: No change was made in these clauses.

Clause 20: Further consideration of this clause was postponed till the next meeting of the committee.

2. The committee then adjourned till 3 P.M. on the 20th January, 1948.

APPENDIX

PART I—THE UNION AND ITS TERRITORY AND JURISDICTION

1. (1) India shall be a union of States.
 - (2) The States shall mean the States specified in Parts I, II and III of the First Schedule, and shall include such other States as may hereafter be admitted into the union or established by Parliament.
 - (3) The territory of India shall comprise—
 - (a) the territories of the States,
 - (b) the territories specified in Part IV of the First Schedule, and
 - (c) such other territories as may be acquired.
 2. Parliament may, from time to time, by law admit into the union, or establish, new States on such terms and conditions as it thinks fit.
 3. Parliament may by law—
 - (a) form a new State by separation of territory from a State or by uniting two or more States or parts of States;
 - (b) increase the area of any State;
 - (c) diminish the area of any State;
 - (d) alter the boundaries of any State;
 - (e) alter the name of any State:
- Provided that no Bill for the purpose shall be introduced in either House of Parliament except by a member of the Government and unless—
- (a) a representation in writing in that behalf has been made to the President—
 - (i) by a majority of the representatives of the territory in the Legislature of the State from which the territory is to be separated or excluded, or
 - (ii) by the Legislature of any State whose boundaries or name will be affected by the proposal to be contained in the Bill, and
 - (b) where the proposal contained in the Bill affects the boundaries or name of any State, other than a State specified in Part III of the First Schedule, **the views of the Legislature of such State both with respect to the proposal*

*The committee is of opinion that in the case of any State other than a State specified in Part III of the First Schedule, the previous consent of the Legislature of such State is not necessary and it would be enough if the views of such Legislature

*The committee is of opinion that in the case of any State other than a State

to introduce the Bill and with respect to the provisions to be inserted therein have been ascertained by the President, and where such proposal affects the boundaries or name of any State specified in Part III of the First Schedule, the previous consent of the Legislature of such State to the introduction of the Bill has been obtained.

3-A. Any law referred to in article 2 or article 3 of this Constitution shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

12. (1) There shall be equality of opportunity for all citizens in matters of employment under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State.

(3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any *backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.

(4) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

14. (1) No title shall be conferred by the State :

***Provided that nothing in this clause shall affect the right of the Ruler of any State specified in Part III of the First Schedule to confer titles on the citizens domiciled within the territories of, or serving under, such State if he had any such right before the commencement of this Constitution.*

(2) No citizen of India shall accept any title from any foreign State.

(3) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State.

15. (1) Subject to public order, morality and health, every citizen shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(c) to form associations or unions;

(d) to move freely throughout the territory of India;

(e) to reside and settle in any part of the territory of India;

(f) to acquire, hold and dispose of property; and

(g) to practise any profession, or to carry on any occupation, trade or business.

(2) [Held over.]

(3) Nothing in clause (1) of this article shall affect the operation of any existing law.

(4) Nothing in sub-clause (a) of the said clause shall prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against or undermines decency, morals or the authority of the State.

*The committee is of opinion that in clause (3) of article 12, before the words "class of citizens" the word "backward" should be inserted.

**The committee is of opinion that the existing right of the Rulers of States specified in Part III of the First Schedule to confer titles on the citizens domiciled within or serving under such States should be preserved and accordingly recommends that this proviso should be added to clause (1) of article 14.

(5) Nothing in sub-clause (c) of the said clause shall prevent the State from making any law imposing restrictions on the exercise of the right conferred by the said sub-clause in the interests of national economy.

(6) Nothing in sub-clauses (d), (e), (f) and (g) of the said clause shall prevent the State from making any law imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the public interests or *for the protection of the interests of any tribe which by reason of its social condition or habits requires special treatment.*

(7) Nothing in sub-clause (g) of the said clause shall prevent the State from making any law prescribing, or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

16. No person shall be deprived of his life or **personal* liberty without due process of law, nor shall any person be denied equality before the law ***or the equal protection of the laws* within the territory of India.

17. Subject to the provisions of article...of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free.

January 20, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 19th January, 1948.

Clause 1 as shown in the Appendix to those minutes was further revised as shown in Appendix A to these minutes.

It was decided that the proviso to sub-clause (1) of clause 14 should be omitted. Clause 14 as so revised is shown in Appendix A to these minutes.

It was also decided that clause 15, as shown in the Appendix to those minutes, should be revised as shown in Appendix A to these minutes.

The committee was of opinion that clause 19 should be omitted and it was decided to add a footnote to this clause as shown in Appendix A to these minutes.

2. The committee thereafter resumed consideration of the draft clauses of the Constitution previously revised by it.

Clauses 20, 21 and 22 : No change was made in these clauses.

*The committee is of opinion that the word 'liberty' should be qualified by the insertion of the word 'personal' before it for otherwise it might be construed very widely.

**The committee is also of opinion that the words 'or the equal protection of the laws' should be inserted after the words 'equality before the law' as in section (1) of Article XIV of the U.S.A. Constitution (1865).

Clause 24 : It was decided that in paragraph (b) of sub-clause (3) of clause 24, for the word "schools" the words "educational institutions" and for the word "school" the words "educational institution" should be substituted.

Clause 25 was further revised as shown in Appendix B to these minutes.

Clause 28 : It was decided that this clause should be further revised as shown in Appendix B to these minutes.

The committee was of opinion that clause 97 should be also revised to provide power to the Supreme Court to issue such directions or orders as are referred to in clause 28 not only for the purposes of enforcement of fundamental rights, but for other purposes as well.

Clauses 29 and 30 : No change was made in these clauses.

PART III-A

Clause 30-A : No change was made in this clause.

Clause 30-B : This clause was further revised as shown in Appendix B to these minutes.

Clauses 31, 32 and 33 : No change was made in these clauses.

Clause 34 : It was decided that the words "for workers" should be omitted from this clause.

Clauses 35 and 36 : No change was made in these clauses.

Clause 37 : This clause was further revised as shown in Appendix B to these minutes.

Clauses 38 to 41 : No change was made in these clauses.

3. The committee then adjourned till 3 P.M. on the 21st January, 1948.

APPENDIX A

PART I—THE UNION AND ITS TERRITORY AND JURISDICTION

1. (1) India shall be a union of States.
- (2) The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule.
- (3) The territory of India shall comprise—
 - (a) the territories of the States;
 - (b) the territories for the time being specified in Part IV of the First Schedule, and
 - (c) such other territories as may be acquired.
14. (1) No title shall be conferred by the State.
- (2) No citizen of India shall accept any title from any foreign State.
- (3) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State.
15. (1) Subject to public order, morality and health, every citizen shall have the right—
 - (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;

- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) [Held over.]

(3) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against or undermines decency or morality.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law, or prevent the State from making any law imposing restrictions on the exercise of the right conferred by the said sub-clause in the interests of the general public.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or **for the protection of the interests of any aboriginal tribe.*

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

****19.** No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

APPENDIX B

RIGHTS TO PROPERTY

25. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of, or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined.

(3) Nothing in this article shall affect—

- (a) the provisions of any law in force at the date of commencement of this Constitution, or
- (b) the provisions of any law which the State may hereafter make for the purpose of regulating the relation of landlord and tenant in respect of agricultural land or in the discharge of its duty under article 30-B of this Constitution.

**The committee is of opinion that no protection to any minority group is necessary in this article.*

***The committee is of opinion that article 19 should be omitted as the matter referred to in that article would be regulated by international convention.*

RIGHT TO CONSTITUTIONAL REMEDIES

28. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(2a) Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.

(3) The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

30-B. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

37. Every citizen is entitled to free primary education and the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

January 21, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 20th January, 1948.

It was decided that clause 25 as shown in Appendix B to those minutes should be further revised as shown in Appendix A to these minutes.

2. The committee thereafter resumed consideration of the draft clauses of the Constitution previously revised by it.

Clause 42 : It was decided that the brackets and word '*(Rashtrapati)*' should be omitted from this clause.

Clause 42-A : This clause was further revised as shown in Appendix B to these minutes.

Clause 43 : No change was made in this clause.

Clause 43-A : This clause was further revised as shown in Appendix B to these minutes.

Clauses 44 and 45 : No change was made in these clauses.

Clause 46 : It was decided that in paragraph (a) of the Explanation to sub-clause (2) of this clause, for the words 'specified in Parts I and II' the words 'for the time being specified in Part I or Part II' should be substituted and that in paragraph (b) of the said Explanation, for the

word 'specified' the words 'for the time being specified' should be substituted.

Clause 47: It was decided that for sub-clause (3) of this clause, the following should be substituted:

(3) The President shall have an official residence and shall be entitled to receive such emoluments and allowances as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

Clause 48: No change was made in this clause.

Clause 49: It was decided that in sub-clause (4) of this clause for the words 'by which the charge was investigated or caused to be investigated' the words 'by which the charge was, or caused to be investigated' should be substituted.

Clause 50: No change was made in this clause.

Clauses 51, 51-A and 51-B: No change was made in these clauses.

Clause 51-C: It was decided that in paragraph (a) of the Explanation to sub-clause (4) of this clause for the words 'specified in Parts I and II' the words 'for the time being specified in Part I or Part II' should be substituted, and that in paragraph (b) of the said Explanation for the word 'specified' the words 'for the time being specified' should be substituted.

Clause 51-D: This clause was further revised as shown in Appendix B to these minutes.

Clauses 53, 53-A and 54: These clauses were also revised as shown in Appendix B to these minutes.

Clause 55: No change was made in this clause.

Clause 56: This clause was revised as shown in Appendix B to these minutes.

Clause 57: Further consideration of this clause was postponed till the next meeting of the committee.

3. The committee then adjourned till 2.30 P.M. on the 22nd January, 1948.

APPENDIX A

RIGHT TO PROPERTY

25. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined.

(3) Nothing in clause (2) of this article shall affect—

(a) the provisions of any law in force at the date of commencement of this Constitution, or

- (b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

APPENDIX B

42-A. (1) The executive power of the Union is vested in the President and may be exercised by him in accordance with the Constitution and the law.

(2) Without prejudice to the generality of the foregoing provision the supreme command of the Defence Forces of India shall be vested in the President. The exercise of such supreme command shall be regulated by law.

(3) Nothing in this article shall—

- (a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or
- (b) prevent Parliament from conferring by law functions on authorities other than the President.

43-A. (1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

*(2) For the purpose of securing such uniformity the number of votes which each elected member of Parliament and of the Legislature of each State is entitled to cast at such election shall be determined in the following manner:

- (a) every elected member of the Legislature of a State shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the Legislature;
- (b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) of this clause shall be further increased by one;
- (c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislatures of the States under sub-clauses (a) and (b) of this clause by the total number of such members, fractions exceeding one-half being counted as one and other fractions being disregarded.

*The method of calculation set out in clause (2) of article 43-A may be illustrated as follows:

Illustration under sub-clause (a) of clause (2):

- (1) The population of Bombay is 20,849,840. Let us take the total number of elected members in the Legislative Assembly of Bombay to be 208 (*i.e.* one member representing one lakh (100,000) of the population). To obtain the number of votes which each such elected member will be entitled to cast at the election of the President, we have first to divide 20,849,840 (which is the population) by 208 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case the quotient is 100239. The number of votes which each such member will be entitled to cast would be $\frac{100239}{1000}$ *i.e.* 100 (disregarding the remainder 239 which is less than five hundred).
- (2) Again, the population of Bikaner is 1,292,938. Let us take the total number of elected members of the Legislature of Bikaner to be 130 (*i.e.* one member representing roughly ten thousand of the population). Now, applying the aforesaid process, if we divide 1,292,938 (*i.e.* the population) by 130

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation : In this article, the expression "the Legislature of a State" means, where the Legislature is bicameral, the Lower House of the Legislature, and the expression "population" means the population as ascertained at the last preceding census.

51-D. The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

- (a) a Vice-President may, by writing under his hand addressed to the President, resign his office;
- (b) a Vice-President may be removed from his office for incapacity or want of confidence by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;
- (c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

53. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentences of any person convicted of any offence—

- (a) in all cases where the punishment or sentence is by a Court Martial;
- (b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws;

*(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) of this article shall take away the power conferred by law on any officer of the armed forces of India to suspend,

(i.e. the total number of elected members), the quotient is 9945. Therefore, the number of votes which each member of the Bikaner Legislature would be entitled to cast is $\frac{9945}{1000}$ that is 10 (counting the remainder 945 which is

greater than five hundred as one).

Illustration under sub-clause (b) of clause (2) :

If the total number of votes assigned to the members of the Legislatures of the States in accordance with the above calculation be 74940 and the total number of elected members of both the Houses of Parliament be 750, then to obtain the number of votes which each member of either House of Parliament will be entitled to cast at the election of the President, we would have to divide 74940 (i.e. the total number of votes assigned to the members) by 750 (i.e. the total number of elected members). Thus the number of votes which each such member will be entitled to cast in this case would be $\frac{74940}{750} = 99\frac{23}{25}$, that is, 100 (the fraction $\frac{23}{25}$ which exceeds one-half being counted as one).

*The committee is of opinion that the power to suspend, remit or commute the sentence of death should not vest concurrently in the President and the Governor.

remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) of this article shall, save as otherwise provided in any agreement under article 188 of this Constitution, extend the power of the President under that sub-clause to offences committed within States for the time being specified in Part III of the First Schedule.

53-A. (1) The President shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 49 of this Constitution.

(2) No criminal proceedings whatsoever shall be instituted, or continued, against the President in any court during his term of office.

(3) No process for the arrest or imprisonment of the President shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, until the expiration of two months next after notice in writing has been delivered to the President or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

54. (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything contained in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

*56. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who, for any period of six consecutive months, is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

*The committee is of opinion that the provision that the Council of Ministers shall be collectively responsible to the House of the People is not necessary, and so it has not been included in this article.

(5) The salaries of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determine, shall be as specified in the Second Schedule.

(6) The question whether any, and if so, what advice was tendered by Ministers to the President shall not be inquired into in any court.

January 22, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 21st January, 1948.

The committee was of opinion that a new clause 51-E as shown in Appendix A to these minutes should be inserted after clause 51-D providing power to Parliament to make provisions for the discharge of the functions of the President in any contingency not provided for.

Clauses 55 and 56 were further revised as shown in Appendix A to these minutes.

2. The committee thereafter resumed consideration of the draft clauses of the Constitution previously revised by it.

Clause 57 : This clause was further revised as shown in Appendix B to these minutes.

Clause 58 : No change was made in this clause.

Clauses 60 and 60-A : These clauses were further revised as shown in Appendix B to these minutes.

Clause 60-B : No change was made in this clause.

Clause 61 : This clause was further revised as shown in Appendix B to these minutes.

Clauses 62 and 62-A : No change was made in these clauses.

Clause 63 : This clause was further revised as shown in Appendix B to these minutes.

Clause 64 : No change was made in this clause.

Clauses 64-B and 64-C : No change was made in these clauses.

Clause 64-E : No change was made in this clause.

Clause 64-F : This clause was further revised as shown in Appendix B to these minutes.

Clause 69 : This clause was further revised as shown in Appendix B to these minutes.

Clauses 70 and 71 : No change was made in these clauses.

Clause 74 : No change was made in this clause.

Clause 76 : No change was made in this clause.

Clause 77 : It was decided that for item (iii) of paragraph (d) of sub-clause (3) of this clause, the following should be substituted :

(iii) the pensions payable to or in respect of judges of any High Court which exercises or immediately before the commencement of this Constitution exercised jurisdiction within any area included in the States for the time being specified in Parts I and II of the First Schedule.

3. The committee then adjourned till 10.30 A.M. on the 23rd January, 1948.

APPENDIX A

51-E. Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

COUNCIL OF MINISTERS

55. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

*56. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

(2) The Ministers shall hold office during the pleasure of the President.

(3) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(4) A Minister who, for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(5) The salaries of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determine, shall be as specified in the Second Schedule.

APPENDIX B

THE ATTORNEY-GENERAL FOR INDIA

57. (1) The President shall appoint a person, who is qualified to be appointed a judge of the Supreme Court, to be Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the

*The committee considers that collective responsibility is the result of the power given to the Prime Minister to recommend the appointment of other Ministers to the President which also includes power to demand the dismissal of other Ministers although it is not specifically included in the provision about recommendation. In view of this, the committee is of opinion that no express provision that the Council of Ministers shall be collectively responsible to the House of the People is necessary. Such a provision is not to be found in any other constitution with the solitary exception of the Irish Constitution.

President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

60. (1) [Held over.]

(2) [Held over.]

(3) [Held over.]

(4) [Held over.]

(5) (a) Subject to the provisions of article...of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters.

(b) For the purpose of sub-clause (a), the States of India shall be divided, grouped or formed into territorial constituencies and the number of representatives to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population:

Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States.

(c) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India.

(6) The election to the House of the People shall be on the basis of adult suffrage.

(7) Parliament may, by law, provide for the representation in the House of the People of territories other than States.

(8) Upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall be readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine.

(9) When States for the time being specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single unit for the purposes of this article.

60-A. (1) The Council of States shall not be subject to dissolution, but as nearly as may be one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

(2) The House of the People, unless sooner dissolved, shall continue for *[five years] from the date appointed for its first meeting and no longer, and the expiration of the said period of *[five years] shall operate as the dissolution of the House:

*The committee has inserted "five years" instead of "four years" as the life of the House of the People in clause (2) of article 60-A as it considers that under the parliamentary system of government the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by the President for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

61. (1) The Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this article, the President may from time to time—

(a) summon the Houses or either House of Parliament to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People.

63. Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

64-F. There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries and allowances as may be respectively fixed by Parliament by law, and until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

69. If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 66 of this Constitution, or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Government of India.

January 23, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 22nd January, 1948.

It was decided that sub-clause (3) of clause 47 should be further revised as follows:

(3) The President shall have an official residence and there shall be paid to the President such emoluments and allowances as may be determined by Parliament by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

Sub-clause (6) of clause 60 as shown in Appendix B to those minutes was replaced by the following sub-clause:

(6) The election to the House of the People shall be on the basis of adult suffrage; that is to say, every person who is not less than twenty-one years

of age and is not otherwise disqualified under this Constitution or any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt practice shall be entitled to be registered as a voter at such elections.

It was also decided that sub-clause (8) of clause 60 should be further revised as follows:

(8) Upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 224 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine.

2. The committee thereafter resumed consideration of the draft clauses of the Constitution previously revised by it.

Clause 82: It was decided that in sub-clause (4) of this clause, the words "the Speaker of the House of the People" should be underlined and marked with an asterisk "*", and that the following footnote to the said sub-clause should be inserted:

*The Committee is of opinion that the Speaker of the House of the People should preside at a joint sitting of the two Houses of Parliament as the House of the People is the more numerous House.

Clause 83: This clause was further revised as shown in the Appendix to these minutes.

Clauses 85, 86, 88 and 89: No change was made in these clauses.

Clause 90: This clause was further revised as shown in the Appendix to these minutes.

Clause 91: No change was made in this clause.

Clause 93: No change was made in this clause.

Clauses 94 and 94-A: These clauses were further revised as shown in the Appendix to these minutes.

Clause 96: No change was made in this clause.

Clause 97: This clause was further revised as shown in the Appendix to these minutes.

Clauses 98 and 99: No change was made in these clauses.

Clause 100: This clause was further revised as shown in the Appendix to these minutes.

Clause 101: No change was made in this clause.

Clause 102: This clause was further revised as shown in the Appendix to these minutes.

3. The committee then adjourned till 10 A.M. on the 24th January, 1948.

APPENDIX

83. (1) In Parliament business shall be transacted in Hindi or English:

Provided that the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may permit any member who cannot

adequately express himself in either language to address the House in his mother tongue.

(2) The Chairman of the Council of States or the Speaker of the House of the People may, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People, as the case may be, a summary in Hindi or English of the speech delivered by a member in any other language and such summary shall be included in the record of the proceedings of the House in which such speech has been delivered.

90. (1) If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the court owing to any sufficient reason, or if by reason of any temporary increase in the business of the Supreme Court the strength of the judges of the court should for the time being be increased, the Chief Justice or, in his absence, the acting Chief Justice may, after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the court, as an *ad hoc* judge, for such period as may be necessary, of a judge of a High Court to be designated by the Chief Justice or, as the case may be, the acting Chief Justice of the Supreme Court.

(2) It shall be the duty of the judge, who has been so designated, in priority to other duties of his office to attend the sittings of the Supreme Court at the time and for the period for which his attendance shall be required, and while so attending he shall possess the powers and privileges and shall discharge the duties of a judge of the Supreme Court.

94. (1) An appeal shall lie to the Supreme Court from a judgment, decree or final order in a civil proceeding of a High Court in a State for the time being specified in Part I or Part II of the First Schedule, if the High Court certifies—

(a) that the amount or value of the subject matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees; or

(b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or

(c) that the case is a fit one for appeal to the Supreme Court, and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below, in any case other than one referred to in clause (c), if the High Court further certifies that the appeal involves some substantial question of law.

(2) Notwithstanding anything contained in article 93, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal the ground that the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided.

94-A. The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in a State for the time being specified in Part I or Part II of the First Schedule, in cases where the provisions of article 93 do not apply.

97. Parliament may, by law, confer on the Supreme Court power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 28 (which relates to the enforcement of fundamental rights) of this Constitution.

100. (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that court for consideration and the court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything contained in clause (i) of the proviso to article 92, refer a dispute of the kind mentioned in the said clause to the Supreme Court for decision, and the Supreme Court shall thereupon, after giving the parties an opportunity of being heard, decide the same and report the fact to the President thereon.

*102. (1) The Supreme Court may from time to time with the approval of the President, make rules for regulating generally the practice and procedure of the court including—

- (a) rules as to the persons practising before the court,
- (b) [omitted],
- (bb) rules as to the procedure in hearing appeals and other matters including the time to be allowed to advocates appearing before the court to make their submissions in respect thereof,
- (c) rules as to the costs of and incidental to any proceedings in the court,
- (d) [omitted],
- (e) rules as to the granting of bail,
- (f) rules as to stay of proceedings, and
- (g) rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this article shall provide that the minimum number of judges who are to sit for any purpose shall be five:

Provided that no judge shall be excluded from any sitting of the court for any purpose if he expresses his willingness to sit for such purpose.

(3) Subject to the provisions of any rules made under this article and to the proviso to clause (2) of this article, the Chief Justice shall determine what judges are to constitute any division of the court and what judges are to sit for any purpose.

(4) No opinion for the purpose of any report under article 100 of this Constitution and no judgment shall be delivered by the Supreme Court save in open court.

(5) No such report shall be made and no judgment shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion or judgment.

January 24, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 23rd January, 1948.

Clause 90 was further revised as shown in Appendix A to these minutes.

Clause 102 was further revised as shown in Appendix A to these minutes.

2. The committee thereafter resumed consideration of the draft clauses of the Constitution previously revised by it.

*No provision as to the making of rules regarding the time within which appeals to the Supreme Court are to be entered or regarding the fees to be charged in respect of proceedings in the Supreme Court have been included in this article as the committee is of opinion that such matters may be regulated by an Act of Parliament.

Clause 103 : It was decided that this clause should be re-numbered as clause 97-A and transferred after clause 97.

Clause 104 : No change was made in this clause.

Clause 106 : For sub-clause (4) of this clause, the following sub-clauses were substituted :

(4) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-General shall be fixed by the Auditor-General in consultation with the President.

(5) The salaries, allowances and pensions payable to or in respect of the Auditor-General and members of his staff shall be charged upon the revenues of India.

Clause 109 : No change was made in this clause.

Clause 164 : No change was made in this clause.

Clauses 164-A and 164-B : These clauses were further revised as shown in Appendix B to these minutes. The committee did not consider the change suggested by Shri Alladi Krishnaswami Ayyar in Explanation II to sub-clause (2) of clause 164-A to be necessary.

Clause 164-C : No change was made in this clause.

Clause 164-D : This clause was further revised as shown in Appendix B to these minutes.

Clauses 165, 166, and 166-A : No change was made in these clauses.

Clause 166-B : This clause was further revised as shown in Appendix B to these minutes.

Clause 167 : No change was made in this clause.

Clause 167-A : This clause was further revised as shown in Appendix B to these minutes.

Clause 168 : No change was made in this clause.

Clause 170 : No change was made in this clause.

Clauses 174 and 175 : These clauses were further revised as shown in Appendix B to these minutes.

3. The committee then resumed consideration of the Draft Constitution.

Clauses 111 to 159 : These clauses were revised as shown in Appendix C to these minutes.

The committee was of opinion that the provisions relating to the protection of the Governor from civil and criminal processes should be amalgamated with those relating to the President and placed under a separate chapter.

4. The committee thereafter adjourned till 10.30 A.M. on the 26th January, 1948.

APPENDIX A

90. (1) If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the court, the Chief Justice may, after consultation with the Chief Justice of the High Court concerned, request in

writing the attendance at the sittings of the court, as an *ad hoc* judge, for such period as may be necessary, of a judge of a High Court to be nominated by the Chief Justice of the Supreme Court.

(2) It shall be the duty of the judge, who has been so nominated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall possess the powers and privileges, and shall discharge the duties of a judge of the Supreme Court.

*102. (1) The Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the court including—

- (a) rules as to the persons practising before the court,
- (b) [omitted],
- (bb) rules as to the procedure for hearing appeals and other matters including the time to be allowed to advocates appearing before the court to make their submissions in respect thereof,
- (c) rules as to the costs of and incidental to any proceedings in the court,
- (d) [omitted],
- (e) rules as to the granting of bail,
- (f) rules as to stay of proceedings, and
- (g) rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) Rules made under this article shall provide that the minimum number of judges who are to sit for any purpose shall be five:

Provided that it shall be the duty of every judge of the court to take part in the determination of any case unless owing to illness, personal interest or other sufficient cause he is unable to do so.

(3) No opinion for the purpose of any report under article 100 of this Constitution and no judgment shall be delivered by the Supreme Court save in open court.

*No provision as to the making of rules regarding the time within which appeals to the Supreme Court are to be entered or regarding the fees to be charged in respect of proceedings in the Supreme Court have been included in this article as the committee is of opinion that such matters may be regulated by an Act of Parliament.

The committee is of opinion that the practice prevailing in the Supreme Court in the United States of America, where all the judges of the court participate in the hearing of every matter, should be followed in the case of the Supreme Court of India. The judges of the Supreme Court of the United States of America attach the greatest importance to this practice. It has accordingly been provided in clause (2) of this article that the minimum number of judges who are to sit for any purpose shall be five, but it shall be the duty of every judge of the court to take part in the determination of any case unless he is unable to do so for sufficient cause. A new item (bb) providing power to make rules for regulating the time to be allowed to advocates to make their submissions to the court has also been inserted. This follows the practice prevalent in the Supreme Court in the United States where the advocates are allowed only one hour to argue each case before the Supreme Court. The committee considers that such restriction as to the time to be allowed to advocates to make their submissions before the court is necessary for expeditious disposal of cases by the Supreme Court especially in view of the provision made in regard to the participation of all the judges of the court in the determination of cases.

(4) No such report shall be made and no judgment shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion or judgment.

APPENDIX B

*164-A. (1) Every judge of a High Court in any State for the time being specified in Part I or Part II of the First Schedule shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor or the Lieutenant-Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years or such higher age not exceeding sixty-five years as may be fixed in this behalf by law of the Legislature of the State :

Provided that—

- (a) a judge may, by writing under his hand addressed to the Governor or the Lieutenant-Governor, as the case may be, resign his office;
 - (b) a judge may be removed from his office by the President in the manner provided in clause (4) of article 87 of this Constitution for the removal of a judge of the Supreme Court;
 - (c) the office of the judge shall be vacated by his being appointed by the President to be a judge of the Supreme Court or of any other High Court.
- (2) A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India and—
- (a) has held for at least ten years a judicial office in any State in or for which there is a High Court; or
 - (b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation I: For the purposes of this clause—

- (a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which a person held judicial office after he became an advocate;
- (b) in computing the period during which a person has held judicial office in a State for the time being specified in Part I or Part II of the First Schedule or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he held judicial office in any area which was comprised before the fifteenth day of August, 1947, within British India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

Explanation II: In sub-clauses (a) and (b) of this clause, the reference to a High Court shall be construed as including a reference to a court in a State for the time being specified in Part III of the First Schedule which is a High Court for the purposes of articles 87 and 90 of this Constitution.

164-B. The provisions of clauses (4) and (5) of article 87 of this Constitution shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to a High Court for references to the Supreme Court.

*This clause and other clauses in this Chapter will require modification if the recommendations of the *ad hoc* Committee on Chief Commissioners' Provinces as to the formation of Lieutenant-Governors' Provinces are not accepted.

*164-D. No person who has held office—

(a) as a judge of a High Court, or

(b) as an additional judge or temporary judge of a High Court on having been recruited from the Bar,

shall plead or act in any court or before any authority within the territory of India.

166-B. Notwithstanding anything contained in this Chapter, the Chief Justice of a High Court may at any time, subject to the provisions of this article, request any person who has held the office of a judge of that court to sit and act as a judge of the court, and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be a judge of that court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a judge of that court unless he consents so to do.

167-A. (1) Notwithstanding anything contained in article 28 of this Constitution, every High Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, throughout the territories in relation to which it exercises jurisdiction for any purposes including the purpose of enforcement of any of the rights conferred by Part III of this Constitution.

(2) The power conferred on a High Court by clause (1) of this article shall not be in derogation of the power conferred on the Supreme Court by clause (1) of article 28 of this Constitution.

CHAPTER IX—AUDITORS-IN-CHIEF FOR THE STATES†

174. (1) The Legislature of a State for the time being specified in Part I of the First Schedule may by law provide for the appointment of an Auditor-in-Chief for the State and when such provision has been made an Auditor-in-Chief for that State may be appointed by the Governor in his discretion and the Auditor-in-Chief so appointed shall only be removed from office in like manner and on the like grounds as a judge of the High Court of the State.

(2) An Act passed under clause (1) of this article by the Legislature of a State shall provide that no appointment of an Auditor-in-Chief for the State shall be made until the expiration of at least three years from the date of the publication after assent of the Act.

(3) Every such Act shall prescribe the conditions of service of the Auditor-in-Chief and the duties which shall be performed and the powers which shall be exercised by the Auditor-in-Chief in relation to the accounts of the State and shall declare the salary, allowances and pension payable to or in respect of the Auditor-in-Chief to be charged on the revenues of the State.

(4) The Auditor-in-Chief of the State shall be eligible for appointment as Auditor-General of India or as Auditor-in-Chief for any other State for the time being specified in Part I of the First Schedule but not for any other appointment either

*The committee is of opinion that a person who held office as judge of a High Court should be prohibited from practising in any court or before any authority and so also additional judges and temporary judges of the court recruited from the Bar, and this article has been inserted accordingly.

†The committee is of opinion that the person performing the functions of an Auditor-General in a State should be designated as Auditor-in-Chief to distinguish him from the Auditor-General of India.

under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-in-Chief of a State shall be fixed by the Auditor-in-Chief in consultation with the Governor of the State and shall be charged upon the revenues of the State.

(6) Nothing in this article shall derogate from the power of the Auditor-General of India to give such directions in respect of the accounts of the States for the time being specified in Part I of the First Schedule as are mentioned in article 108 of this Constitution.

175. The reports of the Auditor-General of India or the Auditor-in-Chief of the State, as the case may be, relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

APPENDIX C

PART V—THE STATES IN PART I OF THE FIRST SCHEDULE

Chapter I—General

110. In this Part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I of the First Schedule.

Chapter II—The Executive

The Governor* [and Deputy Governor]

111. There shall be a Governor for each State.

111-A. (1) The executive power of the State shall be vested in the Governor and may be exercised by him in accordance with the Constitution and the law.

(2) Nothing in this article shall—

- (a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or
- (b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

112. The Governor of a State shall be elected by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State.

113. The Governor shall hold office for a term of †five years from the date on which he enters upon his office:

Provided that—

- (a) a Governor may, by resignation under his hand addressed to the Speaker of the Legislative Assembly of the State or where there are two Houses of the Legislature of the State, to the Speaker of the Legislative Assembly and the Chairman of the Legislative Council of the State, resign his office;
- (b) a Governor may, for **violation of the Constitution, be removed from office by impeachment in the manner provided in article 118 of this Constitution;

*The words "and Deputy Governor" within the square brackets should be omitted if the provisions of this Chapter relating to Deputy Governor are omitted.

†The committee is of opinion that the term of office of the Governor should be five years instead of four years in view of the change suggested by the committee in the life of the Assembly from four years to five years.

**The committee is of opinion that the Governor should be impeached only for violation of the Constitution as in the case of the President and not for stated misbehaviour.

(c) a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

114. A person who holds, or who has held, office as Governor shall be eligible for re-election to that office once, but only once.

115. (1) No person shall be eligible for election as Governor of a State unless he—

(a) is a citizen of India;

(b) has completed the age of thirty-five years; and

(c) is qualified for election as a member of the Legislative Assembly of the State.

(2) A person shall not be eligible for election as a Governor if he holds any office or position of emolument under the Government of India or the Government of any State for the time being specified in the First Schedule, or under any local or other authority subject to the control of either Government.

Explanation: For the purposes of this clause a person shall not be deemed to hold any office or position of emolument by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I or Part II of the First Schedule; or,

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of such Legislature, and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

116. (1) The Governor shall not be a member either of Parliament or of the Legislature of any State for the time being specified in the First Schedule, and if a member of Parliament or of the Legislature of any such State be elected Governor, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence, and there shall be paid to the Governor such emoluments and allowances as may be determined by the Legislature of the State by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

117. Every Governor and every person *[acting as, or] discharging the functions of the Governor shall before entering upon his office make and subscribe in the presence of the members of the Legislature of the State an affirmation or oath in the following form, that is to say—

I, A.B., do solemnly affirm (or swear) that I will faithfully execute the office of Governor (or discharge the functions of the Governor) of...(name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of...(name of the State).

118. (1) When a Governor is to be impeached for violation of the Constitution, the charge shall be preferred by the Legislative Assembly of the State.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after a notice in writing signed by not less than thirty members of the Assembly has been given of their intention to move the resolution, and

*The words "acting as, or" within square brackets should be omitted if the provisions of this Chapter relating to Deputy Governor are omitted.

(b) the resolution has been supported by not less than two-thirds of the total membership of the Assembly.

(3) When a charge has been so preferred, the Speaker of the Assembly shall inform the Chairman of the Council of States and thereupon the Council of States shall appoint a committee which may consist of or include persons who are not members of the Council, to investigate the charge and the Governor shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the Council of States declaring that the charge preferred against the Governor has been sustained, such resolution shall have the effect of removing the Governor from his office as from the date on which the resolution is communicated to the Speaker of the Assembly.

*119. There shall be a Deputy Governor for each State.

*119-A. (1) In the event of the occurrence of any vacancy in the office of the Governor by reason of his death, resignation or removal, the Deputy Governor shall act as Governor for the unexpired remainder of the term for which the Governor would otherwise have continued in office.

(2) When the Governor is unable to discharge his functions owing to absence, illness or any other cause, the Deputy Governor shall discharge his functions until the date on which the Governor resumes his duties.

119-B. (1) The Deputy Governor shall be elected by the members of the Legislative Assembly of the State, or where there is a Legislative Council in the State, by the members of the Legislative Assembly and the Legislative Council of the State assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

(2) No person shall be eligible for election as Deputy Governor of a State unless he—

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the Legislative Assembly of the State.

(3) A person shall not be eligible for election as Deputy Governor if he holds any office or position of emolument under the Government of India or the Government of any State for the time being specified in the First Schedule, or under any local or other authority subject to the control of either Government.

Explanation: For the purposes of this clause a person shall not be deemed to hold any office or position of emolument by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I or Part II of the First Schedule; or

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of

*The committee is of opinion that articles 119, 119-A, 119-B, 119-C and 119-D should be omitted as the retention of the provisions with regard to the Deputy Governor who will not have any definite functions to perform so long as the Governor is there is hardly necessary in view of the provision contained in article 120 which empowers the Legislature of the State to make such provisions as it thinks fit for the discharge of the functions of the Governor in any contingency not provided for in this Constitution. As soon as the Constitution comes into force the Legislature may in advance make those provisions.

such Legislature, and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

119-C. The Deputy Governor shall hold office for a term of *[five years] from the date on which he enters upon his office:

Provided that—

- (a) a Deputy Governor may, by writing under his hand addressed to the Governor of the State, resign his office;
- (b) a Deputy Governor may be removed from office for violation of the Constitution by impeachment in the manner provided in article 118 of this Constitution for the removal of the Governor from office;
- (c) a Deputy Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

119-D. (1) The Deputy Governor shall not be a member either of Parliament or of the Legislature of any State for the time being specified in the First Schedule, and if a member of Parliament or of the Legislature of any such State be elected Deputy Governor, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as Deputy Governor.

(2) The Deputy Governor shall not, while acting as Governor, hold any other office or position of emolument.

(3) There shall be paid to the Deputy Governor such emoluments and allowances as may be determined by the Legislature of the State by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

(4) The emoluments and allowances of the Deputy Governor shall not be diminished during his term of office.

120. The Legislature of a State may make such provision as it thinks fit for the discharge of the functions of the Governor of the State in any contingency not provided for in this Chapter.

121. (1) An election to fill a vacancy caused by the expiration of the term of office of a Governor †[or a Deputy Governor] shall be completed before the expiration of the term.

‡(2) An election to fill a vacancy occurring by reason of the death, resignation or removal of a Governor shall be held as soon as possible after the occurrence of the vacancy and the person elected to fill the vacancy shall be entitled to hold office for the full term of five years as provided in article 113 of the Constitution.

122. (1) All doubts and disputes arising out of or in connection with the election of a Governor †[or Deputy Governor] shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) Subject to the provisions of this Constitution the Legislature of the State may by law regulate any matter relating to or connected with the election of a Governor †[or Deputy Governor.]

123. (1) The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence,

*The committee is of opinion that the period of "four years" mentioned in article 119-C should also be changed to "five years" if this article is retained in view of the increase in the term of office of the Governor recommended by it.

†These words within square brackets should be omitted if the provisions of this Chapter relating to Deputy Governor are omitted.

‡This provision should be retained only if the provisions of this Chapter relating to Deputy Governor are omitted.

of any person convicted of any offence against any law relating to a matter with respect to which the Legislature of the State has power to make laws.

* (2) Nothing in clause (1) of this article shall be deemed to confer on the Governor the power to suspend, remit or commute the sentence of death passed on any person which is conferred on the President under article 53 of this Constitution.

‡ 124. Subject to the provisions of this Constitution the executive power of each State shall extend—

- (a) to the matters with respect to which the Legislature of the State has power to make laws, and
- (b) to the exercise of such rights, authority and jurisdiction as are exercisable under any agreement entered into with any State or group of States for the time being specified in Part III of the First Schedule under article 189 of this Constitution.

Council of Ministers

125. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

126. (1) The Governor's Ministers shall be appointed by him and shall hold office during his pleasure :

Provided that in the States of Bihar, Central Provinces and Berar and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(3) A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(4) In choosing his Ministers and in his relations with them the Governor shall be generally guided by the instructions set out in the Fifth Schedule, but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.

(5) The salaries of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determines, shall be determined by the Governor.

(6) The functions of the Governor under this article with respect to the choosing, summoning and dismissal of Ministers and with respect to the determination of their salaries shall be exercised by him in his discretion.

* Clause (2) of this article has been inserted as the committee is of opinion that the power to suspend, remit or commute the sentence of death should not vest concurrently in the President and the Governor but should vest only in the President as provided in article 53 of the Constitution.

‡ The committee is of opinion that the case of States in Part III of the First Schedule merged with the States in Part I of that Schedule will require to be considered separately with due regard to the terms of the merger.

The Advocate-General for the State

127. (1) The Governor of each State shall appoint a person who is qualified to be appointed a judge of a High Court, to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal character as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall retire from office upon the resignation of the Prime Minister in the State, but he may continue in office until his successor is appointed or he is reappointed.

(4) The Advocate-General shall receive such remuneration as the Governor may determine.

Conduct of Government Business

128. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

128-A. It shall be the duty of the Prime Minister of each State—

(a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation ;

(b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for ; and

(c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Chapter III—The State Legislature
General

129. (1) For every State there shall be a Legislature which shall consist of the Governor ; and

(a) in the States of...two Houses.

(b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly and where there is only one House, it shall be known as the Legislative Assembly.

130. (1) Subject to the provisions of article...of this Constitution the Legislative Assembly of each State shall be composed of members chosen by direct election.

(2) The election shall be on the basis of adult suffrage ; that is to say, every person who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or any law made by the Legislature of the State on the ground of non-residence, unsoundness of mind, crime or corrupt practice shall be entitled to be registered as a voter at such elections.

(3) The representation of each territorial constituency in the Legislative Assembly of a State shall be on the basis of the population of that constituency as ascertained at the last preceding census and shall be on a scale of not more than one representative for every lakh of the population :

Provided that the total number of members in the Legislative Assembly of a State shall in no case be more than three hundred or less than sixty.

(4) Upon the completion of each census, the representation of the several territorial constituencies in the Legislative Assembly of each State shall, subject to the provisions of article 224 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as the Legislature of the State may by law determine :

Provided that such readjustment shall not affect representation to the Legislative Assembly until dissolution of the then existing Assembly.

131. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five per cent of the total number of members in the Legislative Assembly of that State.

(2) Of the total number of members in the Legislative Council of a State—

(a) one-half shall be chosen from panels of candidates constituted under clause (3) of this article ;

(b) one-third shall be elected by the members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote ; and

(c) the remainder shall be nominated by the Governor.

(3) Before the first general election, and thereafter, before each triennial election under clause (2) of article 131-A of this Constitution to the Legislative Council of a State, six panels of candidates shall be formed, of which one shall contain the names of representatives of universities in the State and the remaining five shall respectively contain the names of persons having knowledge or practical experience of the following interests and services, namely :

(a) national language and culture, literature, art, education and such professional interests as may be defined by the Legislature of the State by law ;

(b) agriculture and allied interests ;

(c) labour ;

(d) industry and commerce including banking, finance, accountancy, engineering and architecture ;

(e) public administration and social services.

(4) Each panel of candidates constituted under clause (3) of this article shall contain at least twice the number to be elected from such panel.

(5) For bye-elections clauses (3) and (4) of this article shall have effect subject to such adaptations and modifications as may be prescribed by the Legislature of the State by law.

131-A. (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for *five years from the date appointed for its first meeting and the expiration of the said period of *five years shall operate as a dissolution of the Assembly.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as may be one-third of the members thereof shall retire as soon as may be on the expiration of every third year in accordance with the provisions made in that behalf by the Legislature of the State by law.

132. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he is, in the case of a seat in a Legislative Assembly, not less than

*The committee has inserted "five years" instead of "four years" as the life of the Assembly in clause (1) of article 131-A as it considers that under the parliamentary system of government the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

twenty-five years of age, and in the case of a seat in a Legislative Council, not less than thirty-five years of age.

133. Subject to the provisions of this Constitution, the Legislature of a State may, by law, regulate all matters necessary for carrying into effect the provisions of articles 130, 131 and 131-A of this Constitution and securing the due constitution of the Legislature of the State and in particular, but without prejudice to the generality of the foregoing words, regulate matters relating to or connected with the delimitation of constituencies and elections to the Legislature of the State.

134. (1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

(2) Subject to the provisions of this article, the Governor may from time to time—

(a) summon the Houses or either House to meet at such time and place as he thinks fit;

(b) prorogue the House or Houses;

(c) dissolve the Legislative Assembly.

(3) The functions of the Governor under sub-clauses (a) and (c) of clause (2) of this article shall be exercised by him in his discretion.

135. (1) The Governor may address the Legislative Assembly or in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Governor may send messages to the House or Houses of the Legislature of the State whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

*135-A. (1) At the commencement of every session, the Governor shall address the Legislative Assembly or in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the cause of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for a discussion of the matters referred to in such address and for the precedence of such discussion or other business of the House.

136. Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses and any joint sitting of the Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of the State Legislature

137. Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

137-A. A member holding office as Speaker or Deputy Speaker of an Assembly—

(a) shall vacate his office if he ceases to be a member of the Assembly;

*This clause which is based on practice prevalent in the British Parliament has been inserted by the committee as it considers that it will prove useful in our Constitution also.

- (b) may at any time by writing under his hand addressed, in the case where such member is the Speaker, to the Deputy Speaker, and in the case where such member is the Deputy Speaker, to the Speaker, resign his office; and
- (c) may be removed from his office for incapacity or want of confidence by a resolution of the Assembly passed by a majority of all the then members of the Assembly :

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

137-B. (1) While the office of Speaker is vacant the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly, the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

137-C. The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

137-D. A member holding office as Chairman or Deputy Chairman of a Legislative Council—

- (a) shall vacate his office if he ceases to be a member of the Council ;
- (b) may at any time by writing under his hand addressed, in the case where such member is the Chairman, to the Deputy Chairman, and in the case where such member is the Deputy Chairman, to the Chairman, resign his office ; and
- (c) may be removed from his office for incapacity or want of confidence by a resolution of the Council passed by a majority of all the then members of the Council :

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

137-E. (1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman, or if the office of Deputy Chairman is also vacant, by such member of the Council as the Governor may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council, the Deputy Chairman or, if he is also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

137-F. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly and to the Chairman and the Deputy Chairman of the Legislative Council such salaries and allowances as may be respectively fixed by the Legislature of the State by law, and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Conduct of business

138. (1) Save as provided in this Constitution, all questions in a House or a joint sitting of two Houses of the Legislature of a State shall be determined by a

majority of votes of the members present and voting, other than the Speaker or Chairman or person acting as such.

The Speaker or Chairman or person acting as such shall not vote in the first instance but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman or person acting as such either to adjourn the House or to suspend the meeting until there is a quorum.

The quorum shall be ten members or one-sixth of the total number of members of the House, whichever is greater.

Disqualifications of members

139. Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor or some person appointed in this behalf by him, a declaration according to the form set out for the purpose in the Third Schedule.

140. (1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of the Legislature of a State and if a person is chosen a member both of Parliament and of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the Governor of the State, that person's seat in the Legislature of the State shall become vacant, unless he has previously resigned his seat in Parliament.

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article; or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be;

his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

141. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

(a) if he holds any office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power;

(e) if he is so disqualified by or under any law made by the Legislature of the State.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I or Part II of the First Schedule; or

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

142. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 139 of this Constitution, or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law made by the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Privileges and immunities of members

143. (1) Subject to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects the privileges and immunities of members of a House of the Legislature of a State shall be such as may from time to time be defined by the Legislature by law and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of the Legislature of a State as they apply in relation to members of that Legislature.

144. Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such salaries and allowances as may from time to time be determined by the Legislature of the State by law, and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the Provincial Legislative Assembly for that State.

Legislative Procedure

145. (1) Subject to the provisions of articles 146-A and 153 of this Constitution with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

(1-a) Subject to the provisions of articles 146 and 146-A of this Constitution, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses either without amendment or with such amendments only as are agreed to by both Houses.

(2) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(3) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(4) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

146. (1) If a Bill which has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for assent, the Governor may summon the Houses to meet in a joint sitting for the purposes of deliberating and voting on the Bill :

Provided that nothing in this clause shall apply to a Money Bill.

(2) If at the joint sitting of the two Houses summoned in accordance with the provisions of this article the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses :

Provided that at a joint sitting—

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill ;

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed ;

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

*146-A. (1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

*This article and all other provisions in this Chapter relating to "Money Bills" have been inserted to give effect to the recommendations of the Expert Committee on the Financial Provisions of the Constitution.

146-B. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely—

- (a) the imposition, abolition, remission, alteration or regulation of any tax ;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State ;
- (c) supply ;
- (d) the appropriation of the revenues of the State ;
- (e) the declaring of any expenditure to be expenditure charged on the revenues of the State, or the increasing of the amount of any such expenditure ;
- (f) the receipt of money on account of the revenues of the State or the custody or issue of such money or the audit of the accounts of the State ; or
- (g) any matter incidental to any of the matters specified in items (a) to (f) of this clause.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under the last preceding article, and when it is presented to the Governor for assent under the next succeeding article, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

147. A Bill which has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President:

Provided that where there is only one House of the Legislature of a State and the Bill has been passed by that House, the Governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House shall reconsider it accordingly and if the Bill is passed again by the House with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.

148. When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom :

Provided that where the Bill is not a Money Bill the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the proviso to the last preceding article and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by them with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

149. (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the

estimated receipts and expenditure of the State for that year, in this Part of this Constitution referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of the State, and

(b) the sums required to meet other expenditure proposed to be made from the revenues of the State;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of each State—

(a) the emoluments and allowances of the Governor and other expenditure relating to his office;

(b) the emoluments and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly, and in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;

(c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;

(d) expenditure in respect of the salaries and allowances of judges of any High Court;

(e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(f) any other expenditure declared by this Constitution or by the Legislature of the State by law to be so charged.

150. (1) So much of the estimates as relates to expenditure charged upon the revenues of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of those estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

151. (1) The Governor shall authenticate by his signature a schedule specifying—

(a) the grants made by the Assembly under the last preceding article;

(b) the several sums required to meet the expenditure charged on the revenues of the State, but not exceeding in any case the sum shown in the statement previously laid before the House or Houses.

(2) The schedule so authenticated shall be laid before the Assembly but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next two succeeding articles, no expenditure from the revenues of the State shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

152. If in respect of any financial year further expenditure from the revenues of the State becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the House or Houses a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding articles shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

*152-A. If in any financial year expenditure from the revenues of the State has been incurred on any service for which the vote of the Legislative Assembly is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Assembly and the provisions of articles 150 and 151 of this Constitution shall have effect in relation to such demand as they have effect in relation to a demand for a grant.

153. (1) A Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 146-B of this Constitution shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council :

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Procedure generally

154. (1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Provincial Legislature for the State shall have effect in relation to the Legislature of that State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the †Speaker of the Legislative Assembly, or in his absence such person as may be determined by rules of procedure made under clause (3) of this article, shall preside.

155. (1) In the Legislature of a State business shall be transacted in the language or languages generally used in that State or in Hindi or in English.

(2) The Speaker of the Legislative Assembly or the Chairman of the Legislative Council may, whenever he thinks fit, make arrangements for making available in the Assembly or the Council, as the case may be, a summary in any language generally used in the State or in English of the speech delivered by a member in any other language, and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

*This article has been inserted to give effect to the recommendation of the Expert Committee on the Financial Provisions of the Constitution.

†The committee is of opinion that the Speaker of the Assembly should preside at a joint sitting of the two Houses as the Assembly is the more numerous House.

156. (1) No discussion shall take place in the Legislature of a State with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties.

(2) In this article, the reference to a High Court shall be construed as including a reference to any court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of Chapter IV of Part IV of this Constitution.

157. (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Elections to the Legislature

*158. Subject to the provisions of this Constitution, the Legislature of a State may, from time to time, make provisions with respect to all matters relating to or connected with elections to the Legislative Assembly of the State or where there are two Houses of the Legislature of the State to either House of such Legislature including the delimitation of constituencies.

Chapter IV—Legislative Power of the Governor

159. (1) If at any time when the Legislature of a State is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if an Act of the Legislature of the State containing the same provisions would under the provisions of this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

(a) shall be laid before the Legislature of the State and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed by the Council; and

(b) may be withdrawn at any time by the Governor.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent Legislative List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the

*The committee is of opinion that all provisions with respect to matters relating to or connected with elections to the House or Houses of the Legislature of a State should be made by Acts of the Legislature of the State which may be passed immediately after the Constitution comes into force and no such provision should be inserted in any Schedule to the Constitution.

State which has been reserved for the consideration of the President and assented to by him.

January 26, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 24th January, 1948.

It was decided that to clause 166-B as shown in Appendix B to those minutes there should be added a footnote as follows :

The employment of retired judges follows the practice in the United Kingdom and in the United States of America.

Sub-clause (1) of clause 167-A as shown in Appendix B to those minutes was further revised as follows :

(1) Notwithstanding anything contained in article 28 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, for any purposes including the purpose of enforcement of any of the rights conferred by Part III of this Constitution.

Sub-clause (2) of clause 123 as shown in Appendix C to those minutes was further revised as follows :

(2) Nothing in clause (1) of this article shall be deemed to confer on the Governor the power to suspend, remit or commute a sentence of death passed on any person.

2. The committee thereafter resumed consideration of the Draft Constitution.

Clauses 160, 161 and 162 : These clauses were further revised as shown in the Appendix to these minutes.

PART VI—THE CHIEF COMMISSIONERS' PROVINCES

Clauses 176 to 178 : The committee considered the report of the *ad hoc* Committee on Chief Commissioners' Provinces. It was decided that these clauses should be revised as shown in the Appendix to these minutes. The committee was of opinion that it was not necessary to make any detailed provisions with regard to the constitution of these Provinces and that the revised provisions proposed would enable the recommendations of the committee, if adopted by the Constituent Assembly to be given effect to by the President by order.

PART VI-A

It was also decided that a new Part VI-A containing clause 178-A as shown in the Appendix to these minutes should be inserted after Part VI to make provision for the administration of the territory specified in Part IV of the First Schedule and of any other territory forming part of the territory of India but not specified in that Schedule.

PART VII

Clause 179 : This clause was revised as shown in the Appendix to these minutes.

Clause 180 : Further consideration of this clause will be taken up at the next meeting of the committee.

3. The committee then adjourned till 2.30 P.M. on the 28th January, 1948.

APPENDIX

CHAPTER V—PROVISIONS IN CASES OF GRAVE EMERGENCIES

160. (1) If at any time the Governor of a State is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the State and that it is not possible to carry on the Government of the State in accordance with the provisions of this Constitution, he may, by proclamation, declare that his functions shall, to such extent as may be specified in the proclamation, be exercised by him in his discretion, and any such proclamation may contain such incidental and consequential provisions as may appear to him necessary or desirable for giving effect to the objects of the proclamation including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Provided that nothing in this clause shall authorise the Governor to assume to himself any of the powers vested in or exercisable by a High Court or to suspend, either in whole or in part, the operation of any provision of this Constitution relating to High Courts.

(2) The proclamation shall be forthwith communicated by the Governor to the President who may thereupon either revoke the proclamation or take such action as he considers appropriate in exercise of the emergency powers vested in him under article 182 of this Constitution.

(3) A proclamation under this article shall cease to operate at the expiration of two weeks unless revoked earlier by the Governor or by the President by public notification.

(4) The functions of the Governor under this article shall be exercised by him in his discretion.

CHAPTER VI—SCHEDULED AND TRIBAL AREAS

161. In this Constitution—

(a) the expression 'scheduled areas' means the areas specified in Parts I to VII

of the table appended to paragraph 18 of the Seventh Schedule in relation to the States to which those parts respectively relate;

- (b) the expression 'tribal areas' means the areas specified in Parts I and II of the table appended to paragraph 19 of the Eighth Schedule.

162. (1) The provisions of the Seventh Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any State for the time being specified in Part I of the First Schedule.

(2) The provisions of the Eighth Schedule shall apply to the administration of the tribal areas in the State of Assam.

*PART VI—THE STATES IN PART II OF THE FIRST SCHEDULE

176. Subject to the other provisions of this Part, a State for the time being specified in Part II of the First Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Governor or Ruler of a neighbouring State.

177. The President shall not act through the Governor or Ruler of a neighbouring State save after—

- (a) consultation with the Governor or Ruler concerned; and
- (b) consideration of the wishes of the people of the State for the time being specified in Part II of the First Schedule concerned, ascertained in such manner as the President considers most appropriate.

177-A. The President may, by order, create or continue for any State for the time being specified in Part II of the First Schedule and administered through a Chief Commissioner or Lieutenant-Governor, (a) a local Legislature, or (b) a Council of Advisers or both with such constitution, powers and functions, in each case, as may be specified in the order.

178. Until other provision is made in this behalf by the President, the constitution, powers and functions of the Coorg Legislative Council and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall remain unchanged.

PART VI-A—THE TERRITORIES IN PART IV OF THE FIRST SCHEDULE AND OTHER TERRITORIES NOT SPECIFIED IN THAT SCHEDULE

178-A. (1) Any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or other authority to be appointed by him.

(2) The President may make regulations for the peace and good government of any such territory and any regulation so made may repeal or amend any law made by Parliament or any existing law which is for the time being applicable to such

*The committee is of opinion that it is not necessary to make any detailed provisions with regard to the constitution of the States specified in Part II of the First Schedule which are at present Chief Commissioners' Provinces on the lines suggested by the *ad hoc* Committee on Chief Commissioners' Provinces in their recommendations. The revised provisions proposed in this Part would enable the recommendations of the *ad hoc* committee, if adopted by the Constituent Assembly, to be given effect to by the President by order.

territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to such territory.

PART VII

179. Subject to the provisions of this Constitution, Parliament may make laws (including laws having extra-territorial operation) for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

January 28, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Maulavi Saiyid Muhammad Saadulla; (3) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 26th January, 1948, and approved them.

2. The committee thereafter resumed consideration of the Draft Constitution.

Clause 180 : This clause was discussed and it was decided that a redraft of this clause should be prepared and submitted to the committee for examination.

It was also decided that four new clauses 180-A, 180-B, 180-C and 180-D dealing with legislation with respect to the Supreme Court and the High Courts as shown in the Appendix to these minutes should be inserted after clause 180.

Clause 181 : It was decided that this clause should be transferred to the Chapter dealing with special provisions regarding States in Part III of the First Schedule.

New clause 181-A : It was decided that a new clause 181-A as shown in the Appendix to these minutes should be inserted after clause 181.

Clause 182 : It was decided that this clause should be replaced by two clauses 182 and 182-A as shown in the Appendix to these minutes, and the provisions regarding the issue of a proclamation and its revocation should be omitted from this clause and inserted in the Chapter dealing with emergency provisions.

Clause 183 : This clause was revised as shown in the Appendix to these minutes.

New clause 183-A : It was decided that a new clause 183-A as shown in the Appendix to these minutes should be inserted after clause 183.

Clauses 184 and 185 : These clauses were revised as shown in the Appendix to these minutes.

Clauses 186 to 190 : These clauses were also revised as shown in the Appendix to these minutes.

New clause 190-A : It was decided that a new clause 190-A as shown in the Appendix to these minutes containing the provisions originally included in clause 27 in Part III (dealing with the fundamental rights) should be inserted after clause 190.

Clause 191 : This clause was revised as shown in the Appendix to these minutes.

Clause 192 : It was decided that this clause should be omitted.

New clauses 192-A, 192-B, 192-C and 192-D : It was decided that four new clauses 192-A, 192-B, 192-C and 192-D as shown in the Appendix to these minutes, based on sections 130, 131, 132, 133 and 134 of the Government of India Act, 1935 dealing with interference with water supplies should be inserted.

New clauses 192-E, 192-F and 192-G : It was decided that three new clauses 192-E, 192-F and 192-G relating to trade, commerce and intercourse between States as shown in the Appendix to these minutes should also be inserted.

Clauses 193 and 194 : It was decided that these clauses should be revised as shown in the Appendix to these minutes.

3. The committee then adjourned till 10 A.M. on the 29th January, 1948.

APPENDIX

180-A. Parliament has the exclusive power to make laws with respect to the constitution, organisation, jurisdiction and powers of the Supreme Court.

180-B. Subject to the provisions of this Constitution—

- (a) the Legislature of a State for the time being specified in Part I of the First Schedule has the exclusive power to make laws with respect to the constitution and organisation of any High Court which has its principal seat within such State;
- (b) Parliament has power to make laws with respect to the constitution and organisation of any High Court which has its principal seat in a State for the time being specified in Part II of the First Schedule.

180-C. (1) Parliament has the exclusive power to make laws regarding the jurisdiction and powers of any High Court with respect to any of the matters enumerated in the Union List.

(2) The Legislature of a State for the time being specified in Part I of the First Schedule in relation to which or in relation to any area within which a High Court exercises jurisdiction has the exclusive power to make laws regarding the jurisdiction and powers of such High Court in relation to such State or area with respect to any of the matters enumerated in the State List.

(3) Parliament and also the Legislature of a State for the time being specified in Part I of the First Schedule in relation to which or in relation to any area within which a High Court exercises jurisdiction have power to make laws regarding the jurisdiction and powers of such High Court in relation to such State or area with respect to any of the matters enumerated in the Concurrent List.

(4) Parliament has power to make laws regarding the jurisdiction and power of a High Court in relation to a State for the time being specified in Part II of the First Schedule or any area within such State with respect to any of the matters enumerated in the State List.

180-D. Parliament and also the Legislature of a State for the time being specified in Part I of the First Schedule in which a High Court has its principal seat have power to make laws with respect to the procedure to be followed by such High Court in civil and criminal matters.

*181-A. Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter.

182. (1) Notwithstanding anything in this Chapter, Parliament shall, if the President has issued a proclamation under article...of this Constitution, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a proclamation under article...of this Constitution have been competent to make shall, to the extent of the incompetency cease to have effect on the expiration of a period of six months after the proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

182-A. Nothing in articles 181-A and 182 of this Constitution shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

183. (1) If it appears to the Legislature or Legislatures of one or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the State except as provided in articles 182 and 182-A of this Constitution, should be regulated in such State or States by Parliament by law, and a resolution or resolutions to that effect is or are passed by the House or, where there are two Houses, by both the Houses of the Legislature or Legislatures of the State or States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such State or States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

†(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State

*The committee is of opinion that power should be provided for Parliament to legislate with respect to any matter in the State List in the national interest, and has inserted this article for the purpose.

†The committee is of opinion that an Act passed by Parliament with the consent of the States should not be allowed to be amended or repealed by any Act of the Legislature of any State to which it applies, but should be amended or repealed only by an Act of Parliament passed or adopted in the same manner in which the principal Act was passed or adopted. This is in conformity with the provisions of section 51 (XXXVII) read with section 109 of the Commonwealth of Australia Constitution Act,

to which it applies, be amended or repealed by an Act of the Legislature of that State.

*183-A. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any other country or countries.

184. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of this article, the law made by Parliament, whether passed before or after the law made by the Legislature of such State or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State for the time being specified in Part I of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or any existing law with respect to that matter, then the law made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received the assent of the President, prevail, but nevertheless Parliament may at any time enact further legislation with respect to the same matter.

Restriction on Legislative Powers

185. No Act of Parliament or of a Legislature of a State for the time being specified in Part I or Part II of the First Schedule and no provision in any such Act shall be invalid by reason only that some recommendation required by this Constitution was not given, if assent to that Act was given—

- (a) where the recommendation required was that of the Governor, either by the Governor or by the President;
- (b) where the recommendation required was that of the President, by the President.

CHAPTER II—ADMINISTRATIVE RELATIONS

General

186. The executive power of every State shall be so exercised as to secure respect for the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for this purpose.

187. (1) Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

*The committee is of opinion that Parliament should have power to make any law for any State or part thereof for implementing any treaty or agreement with any foreign country, irrespective of whether the Governor or Ruler of such State has given his previous consent or not thereto.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

188. (1) The Government of India may, by agreement with any State for the time being specified in Part III of the First Schedule, but subject to the provisions of this Constitution in regard to the relationship between the Union and such State, undertake any executive, legislative or judicial functions vested in that State.

(2) The Government of India may also enter into such an agreement with the Government of any Indian State not specified for the time being in the First Schedule, but every such agreement shall be subject to, and governed by, the law relating to the exercise of foreign jurisdiction for the time being in force.

Explanation: In this clause, the expression 'Indian State' means any territory, not being part of the territory of India, which the President recognises as being such a State.

(3) If an agreement entered into with any State under clause (1) of this article provides for any matter with respect to which provision has been already made in an agreement entered into with such a State under article 189 of this Constitution by the Government of any State for the time being specified in Part I of the First Schedule, then the latter agreement shall, in so far as it provides for such matter, be deemed to be revoked and of no effect on and from the date of conclusion of the former agreement.

(4) On an agreement under clause (1) of this article being concluded between the Union and a State for the time being specified in Part III of the First Schedule—

- (a) the executive power of the Union shall extend to any matter specified in that behalf in such agreement;
- (b) Parliament shall have power to make laws with respect to any matter specified in that behalf in such agreement; and
- (c) the Supreme Court of India shall, subject to the provisions of clause (2) of article 96, have jurisdiction with respect to any matter specified in that behalf in such agreement.

189. (1) It shall be competent for the Government of a State for the time being specified in Part I of the First Schedule with the previous sanction of the President to undertake, by an agreement made in that behalf with any State for the time being specified in Part III of the First Schedule, any legislative, executive or judicial functions vested in the latter State, if such agreement relates to a matter which is enumerated in the State Legislative List or the Concurrent Legislative List.

(2) On an agreement under clause (1) of this article being concluded between a State for the time being specified in Part I of the First Schedule and a State for the time being specified in Part III of that Schedule—

- (a) the executive power of the State specified in Part I of the said Schedule shall extend to any matter specified in that behalf in such agreement;
- (b) the Legislature of the State specified in Part I of the said Schedule shall have power to make laws with respect to any matter specified in that behalf in such agreement; and
- (c) the High Court and other appropriate courts in the State specified in Part I of the said Schedule shall have jurisdiction with respect to any matter specified in that behalf in such agreement.

190. The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive

power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance:

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

*190-A. (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State, and the manner in which and the conditions under which such acts, records and proceedings shall be proved and the effect thereof determined shall be as provided by law.

(2) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law.

191. Where a Proclamation of Emergency is in operation whereby the President has declared that the security of India or the peace and tranquillity of any State for the time being specified in Part I of the First Schedule is threatened, then, notwithstanding anything contained in this Constitution—

(a) the executive power of the Union shall extend to the giving of directions to any State or to the State concerned, as the case may be, as to the manner in which the executive power thereof is to be exercised.

(b) the legislative power of the Union with respect to any matter shall include power to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter.

192. Omitted.

Interference with Water Supply

192-A. If it appears to the Government of any State for the time being specified in Part I or Part III of the First Schedule that the interests of that State or of any of the inhabitants thereof, in the water from any natural source of supply in any State have been or are likely to be affected prejudicially by (a) any executive action or legislation taken or passed, or proposed to be taken or passed; or (b) the failure of any authority to exercise any of their powers, with respect to the use, distribution or control of water from that source, the Government of the State may complain to the President.

192-B. (1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as he thinks fit, and request that commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

*The committee is of opinion that this clause should more appropriately be included in this Chapter than in Part III dealing with fundamental rights,

(3) If it appears to the President upon consideration of the commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the commission, he may again refer the matter to the commission for further investigation and a further report.

(4) For the purposes of assisting a commission appointed under this article in investigating any matters referred to them, the Supreme Court, if requested by the commission so to do, shall make such orders and issue such letters of request for the purposes of the proceedings of the commission as they may make or issue in the exercise of the jurisdiction of the court.

(5) After considering any report made to him by the commission, the President shall make orders in accordance with the report.

(6) Effect shall be given in any State affected to any order made under this article by the President, and any Act of the Legislature of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(7) Subject as hereinafter provided the President, on application made to him by the Government of any State affected, may at any time, if a commission appointed as aforesaid so recommend, vary any order made under this article.

(8) The report of the commission shall include a recommendation by them as to the Government or persons by whom the expenses of the commission and any costs incurred by any State or persons in appearing before the commission are to be paid and as to the amount of any expenses or costs to be so paid; and an order made by the President under this article, in so far as it relates to expenses or costs, may be enforced as if it were an order made by the Supreme Court.

192-C. If it appears to the President that the interests of any State for the time being specified in Part II of the First Schedule, or of any of the inhabitants of such a State, in the water from any natural source of supply in any State for the time being specified in Part I or Part III of the First Schedule have been or are likely to be affected prejudicially by (a) any executive action or legislation taken or passed, or proposed to be taken or passed; or (b) the failure of any authority to exercise any of their powers, with respect to the use, distribution or control of water from that source, he may, if he thinks fit, refer the matter to a commission appointed in accordance with the provisions of the last preceding article and thereupon those provisions shall apply as if the State for the time being specified in Part II of the First Schedule were a State for the time being specified in Part I of that Schedule and as if a complaint with respect to the matter had been made by the Government of that State to the President.

192-D. Notwithstanding anything in this Constitution, neither the Supreme Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter, if action in respect of that matter might have been taken under any of the three last preceding articles by the Government of a State or the President.

Trade, Commerce and Intercourse

*192-E. No preference shall be given by any regulation of trade, commerce or revenue to one State or any part thereof over another State or any part thereof.

*192-F. Notwithstanding anything contained in article 17 or in the last preceding article of this Constitution, it shall be lawful for any State—

- (a) to impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

*The committee is of opinion that the provisions contained in articles 192-E and 192-F should more appropriately be included in this Chapter than in Part III dealing with fundamental rights.

- (b) to impose by law any restrictions on the freedom of trade, commerce or intercourse with that State in the interests of public order, morality and health or in cases of emergency.

192-G. (1) There shall be an inter-State Commerce Commission consisting of such members as the President may think fit to appoint for the execution and maintenance within the territory of India of the provisions of this Constitution relating to trade and commerce.

(2) The term of office of the members of the commission, and the remuneration to be paid to them shall be such as the President may by order determine.

(3) The procedure of the commission shall be defined by the President by order and the commission shall have such powers including the power of adjudication as the President may, from time to time, by order, confer on it.

(4) It shall be the duty of the commission to decide any dispute relating to trade or commerce between the States referred to it by the President for adjudication and the decision of the commission shall be final and shall not be questioned in any court.

Cooperation between States

193. If at any time it appears to the President that the public interests would be served by the establishment of a council charged with the duty of—

- (a) inquiring into and advising upon disputes which may have arisen between States other than disputes relating to trade or commerce;
- (b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest; or
- (c) making recommendations upon any such subject and, in particular, recommendations for the better coordination of policy and action with respect to that subject,

it shall be lawful for the President by order to establish such a council and to define the nature of the duties to be performed by it and its organisation and procedure.

An order establishing any such council may make provision for representatives of any part of the territory of India to participate in the work of the council.

194. (1) The President may at any time and shall, on the expiration of ten years from the commencement of this Constitution, by order, institute a commission to report on the administration of the scheduled areas and the welfare of the scheduled tribes in the States for the time being specified in Part I of the First Schedule.

The order may define the composition, powers and procedure of the commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to such a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the scheduled tribes in the State.

January 29, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Maulavi Saiyid Muhammad Saadulla; (3) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 28th January, 1948.

Paragraphs (a), (b) and (c) of sub-clause (4) of clause 188 and paragraphs (a), (b) and (c) of sub-clause (2) of clause 189 would be further considered by the committee at its next meeting.

Clause 190-A as shown in the Appendix to those minutes was further revised as shown in Appendix A to these minutes.

It was decided that clause 191 should be transferred to the Chapter dealing with Emergency.

Clause 192-B as shown in the Appendix to those minutes was further revised as shown in Appendix A to these minutes.

Clauses 192-E, 192-F and 192-G as shown in the Appendix to those minutes were further revised as shown in Appendix A to these minutes.

It was also decided that clause 194 should be transferred to the Chapter dealing with Minority Rights.

It was decided that sub-clause (2) of clause 9 in Part III should be further revised as shown in Appendix B to these minutes.

2. The committee then resumed consideration of the Draft Constitution.

Clauses 194-A and 195 : These clauses were further revised as shown in Appendix C to these minutes.

New clauses 195-A, 195-B and 195-C as shown in Appendix C to these minutes were inserted after clause 195.

3. The committee then adjourned till 10 A.M. on the 30th January, 1948.

APPENDIX A

*190-A. (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State:

Provided that the provisions of clause (1) shall not apply to public acts, records and judicial proceedings of a State for the time being specified in Part III of the First Schedule unless Parliament has, under the terms of any agreement entered into in that behalf by such State with the Union, power to make laws with respect to the matters enumerated in entries...of the Concurrent List.

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) of this article shall be proved and the effect thereof determined shall be as provided by law.

(3) Final judgments or orders delivered or passed by civil courts in part of the territory of India shall be capable of execution anywhere within that territory according to law:

*The committee is of opinion that this article should more appropriately be included in this Chapter than in Part III dealing with fundamental rights.

The committee is further of opinion that effect ought not to be given to the provisions of this article in relation to any State for the time being specified in Part III of the First Schedule as the laws relating to subjects, such as Civil Procedure, Criminal Procedure and Evidence, enumerated in the Concurrent List may be different in different States. The committee has therefore revised this clause so as to restrict its application only to such of those States as have acceded to the Union in respect of such subjects in the Concurrent List.

Provided that the provisions of clause (3) shall not apply to the final judgments or orders delivered or passed by civil courts in any State for the time being specified in Part III of the First Schedule unless Parliament has, under the terms of any agreement entered into in that behalf by such State with the Union, power to make laws with respect to the matters enumerated in entries...of the Concurrent List.

192-B. (1) If the President receives such a complaint as aforesaid, he shall unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a commission consisting of such persons having special knowledge and experience in irrigation, engineering, administration, finance or law as he thinks fit, and request that commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the President upon consideration of the commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the commission, he may again refer the matter to the commission for further investigation and a further report.

(4) For the purposes of assisting a commission appointed under this article in investigating any matters referred to them, the Supreme Court, if requested by the commission so to do, shall make such orders for the purposes of the proceedings of the commission as they may make in the exercise of the jurisdiction of the court.

(5) The report of the commission shall include a recommendation as to the Government or persons by whom the expenses of the commission and any costs incurred by any State or persons in appearing before the commission are to be paid and as to the amount of any expenses or costs to be so paid; and an order made by the President under this article, in so far as it relates to expenses or costs, may be enforced as if it were an order made by the Supreme Court.

(6) After considering any report made to him by the commission, the President shall make orders in accordance with the report.

(7) Effect shall be given in any State affected to any order made under this article by the President, and any Act of the Legislature of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(8) The President on application made to him by the Government of any State affected, may at any time, if a commission appointed as aforesaid so recommends, vary any order made under this article.

TRADE, COMMERCE AND INTERCOURSES

*192-E. No preference shall be given to nor shall any discrimination be made between one State or any part thereof and another State or any part thereof by any regulation of trade or commerce, whether by means of internal carriage through roads, railways or rivers or by means of navigation through seas.

*192-F. Notwithstanding anything contained in article 17 or in the last preceding article of this Constitution, it shall be lawful for any State—

(a) to impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not

*The committee is of opinion that the provisions contained in articles 192-E and 192-F should more appropriately be included in this Chapter than in Part III dealing with fundamental rights.

to discriminate between goods so imported and goods so manufactured or produced; and

- (b) to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse with that State as may be required in the public interests.

*192-G. Parliament shall by law appoint such authority as it considers appropriate for the carrying out of the provisions of articles 192-E and 192-F of this Constitution and confer on the authority so appointed such powers and such duties as it thinks necessary.

APPENDIX B

9. (1) All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void:

Provided that nothing in this clause shall prevent the State from making any law for the removal of any inequality, disparity, disadvantage or discrimination as between the citizens arising out of any existing law.

(3) In this article, the expression 'law' includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof.

APPENDIX C

PART IX—FINANCE, PROPERTY, CONTRACTS AND SUITS

Chapter I—Finance

Distribution of revenues between the Union and the States

194-A. In this Part, unless the context otherwise requires—

- (a) 'Finance Commission' means the Finance Commission constituted under article 202-A of this Constitution;
- (b) 'State' does not include a State for the time being specified in Part II of the First Schedule.

195. Subject to the following provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, the expression 'revenues of India' includes all revenues and public moneys raised or received by the Government of India and the expression 'revenues of the State' includes all revenues and public moneys raised or received by the Government of a State.

195-A. (1) The following duties shall be levied by the Government of India but shall be collected—

- (a) in the case where such duties are leviable within any State for the time being specified in Part II of the First Schedule, by the Government of India, and

*The committee is of opinion that it would be more appropriate to provide for the appointment of an authority by law for the purpose of carrying out the provisions of articles 192-E and 192-F instead of providing for an inter-State Commission with limited powers as such a commission, if appointed with powers only to adjudicate disputes as to trade or commerce, may not have sufficient work to do.

(b) in other cases by the States within which such duties are respectively leviable, namely:

Such stamp duties as are mentioned in the Union List.

(2) The proceeds in any financial year of any such duty leviable in that year within any State shall not form part of the revenues of India, but shall be assigned to that State.

195-B. (1) The following taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2), namely:

Terminal taxes on goods or passengers carried by railway or air.

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to States for the time being specified in Part II of the First Schedule, shall not form part of the revenues of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among the States in accordance with such principles of distribution as may be prescribed.

195-C. (1) The following taxes and duties shall be levied and collected by the Government of India and distributed between the Union and the States in the manner hereinafter provided in this Chapter, namely:

- (a) Duties in respect of succession to property other than agricultural land;
- (b) estate duty in respect of property other than agricultural land;
- (c) taxes on income other than agricultural income;
- (d) Union duties on excise;
- (e) taxes which are not mentioned in any of the Lists in the Ninth Schedule but are imposed by Parliament by law made under the provisions of article ...of this Constitution.

(2) In this article "taxes on income" includes any sum levied by the Government of India in lieu of any tax on income but does not include any contribution levied by the Government of India in respect of its own undertakings.

January 30, 1948

Present: (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri K. M. Munshi; (3) Maulavi Saiyid Muhammad Saadulla; (4) Shri N. Madhava Rao.

In attendance: (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 29th January, 1948.

It was decided that sub-clause (2) of clause 184 should be further revised as shown in Appendix A to these minutes.

Clause 192-E as shown in Appendix A to those minutes was further revised as shown in Appendix A to these minutes.

Clauses 195-A, 195-B and 195-C as shown in Appendix C to those minutes were further revised as shown in Appendix A to these minutes.

2. The committee thereafter resumed consideration of the Draft Constitution.

Clause 196: Omitted.

Clauses 197 to 199: Further consideration of these clauses was postponed till the next meeting of the committee.

The committee was of opinion that there should be no constitutional prohibition regarding the duty on salt and its levy should be left to the discretion of Parliament.

Clauses 200 and 201: These clauses were revised as shown in Appendix B to these minutes.

It was decided that a provision for suspension of the provisions relating to the distribution of the proceeds of taxes between the Union and the States as recommended by the Expert Committee on the Financial Provisions should be included in the chapter dealing with emergency provisions.

Clause 202: This clause was revised as shown in Appendix B to these minutes.

New clauses 202-A and 202-B: It was decided to insert two new clauses 202-A and 202-B after clause 202 with regard to the Finance Commission as shown in Appendix B to these minutes.

Clauses 203 to 214: These clauses were revised as shown in Appendix B to these minutes.

*PART IX-A

It was decided that a new Part 'IX-A' as shown in Appendix B to these minutes should be inserted after Part IX containing emergency provisions.

*PART X—CHAPTER I

Clause 215: This clause was revised as shown in Appendix B to these minutes and a new clause containing a definition of "State" was inserted before this clause as shown in the said Appendix.

CHAPTER II

New clause 215-A: It was decided that a new clause 215-A as shown in Appendix B to these minutes should be inserted before clause 216 in Chapter II, Part X.

New clause 216-A: It was decided that a new clause 216-A as shown in Appendix B to these minutes should be inserted after clause 216 with regard to conditions of service of persons originally recruited by the Secretary of State.

Clauses 216 to 223: These clauses were revised as shown in Appendix B to these minutes.

***PART XI**

Clauses 224 and 225: These clauses were also revised as shown in Appendix B to these minutes.

3. The committee then adjourned till 10 A.M. on the †31st January, 1948.

APPENDIX A

184. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2) of this article, the law made by Parliament, whether passed before or after the law made by the Legislature of such State or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State for the time being specified in Part I of the First Schedule with respect of one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or any existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

INTER-STATE TRADE AND COMMERCE

‡192-E. No preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air.

195-A. (1) Such stamp duties as are mentioned in the Union List shall be levied by the Government of India but shall be collected—

- (a) in the case where such duties are leviable within any State for the time being specified in Part II of the First Schedule, by the Government of India, and
- (b) in other cases by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable in that year within any State shall not form part of the revenues of India, but shall be assigned to that State.

195-B. (1) Terminal taxes on goods or passengers carried by railway or air shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2) of this article.

(2) The net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to States for the time being specified

*Part XI has not been reproduced in Appendix B.

†The next meeting was held on February 3, 1948.

‡The committee is of opinion that the provisions contained in articles 192-E and 192-F should more appropriately be included in this Chapter than in Part III dealing with fundamental rights.

in Part II of the First Schedule shall not form part of the revenues of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among the States in accordance with such principles of distribution as may be prescribed.

195-C. (1) The following taxes and duties shall be levied and collected by the Government of India and distributed between the Union and the States in the manner hereinafter provided in this Chapter, namely—

- (a) Duties in respect of succession to property other than agricultural land;
- (b) estate duty in respect of property other than agricultural land;
- (c) taxes on income other than agricultural income;
- (d) Union duties of excise;
- (e) taxes which are not mentioned in any of the Lists in the Ninth Schedule but are imposed by Parliament by law made under the provisions of article... of this Constitution.

(2) In this article "taxes on income" includes any sum levied by the Government of India in lieu of any tax on income as referred to in clause (a) of the proviso to article 207 of this Constitution.

APPENDIX B

200. (1) Notwithstanding anything in article 180 of this Constitution, no law of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to taxes on income.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum:

Provided that, if in the financial year immediately preceding the commencement of this Constitution there was in force in any State or any such municipality, board or authority, a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The fact that the Legislature of a State has power to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

201. Any taxes, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament.

202. (1) In the foregoing provisions of this Chapter—

(a) 'prescribed' means—

- (i) until the Finance Commission has been constituted, prescribed by President by order; and
- (ii) after the Finance Commission has been constituted, prescribed by President by order on the recommendation of the Finance Commission;

- (b) 'net proceeds' means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision in this Chapter, an order of the President may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

202-A. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at any other time as the President considers necessary, by order appoint a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) The Chairman shall be a person who holds or has held judicial office not inferior to that of a judge of a High Court.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the distribution between the Union and the States of the net proceeds of taxes which are to be divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
 - (b) the principles which should govern the grants-in-aid to the States out of the revenues of India; and
 - (c) any other matter referred to the Commission by the President for the purposes of sub-clauses (a) and (b) of this clause in the interest of sound finance.
- (4) The commission shall determine its procedure and shall have such powers in the performance of its functions as the President may by order confer on it.
- (5) On receipt of the recommendations made to him by the commission, the President shall make order in accordance therewith.

202-B. The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum, as to the action taken thereon by the President to be laid before Parliament.

MISCELLANEOUS FINANCIAL PROVISIONS

203. The Union or a State may make grants for any purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

204. (1) Rules may be made by the President and by the Governor of a State for the purpose of securing that all moneys received on account of the revenues of India or of the State, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into public account of India or of the State, and the rules so made may prescribe, or authorise some person to prescribe, the procedure to be followed in respect of the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

(2) Notwithstanding anything in this article, Parliament may by law regulate the custody of moneys received on account of the revenues of India, their payment into

the public account of India and the withdrawal of moneys from such account, and the Legislature of a State may by law regulate the custody of all moneys received on account of the revenues of the State, their payment into the public account of the State and the withdrawal of moneys from such account, and any rules made under this article shall have effect subject to the provisions of any such law.

205. The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by or by any authority within a State:

Provided that until Parliament, by law, otherwise provides, any property of the Union which was immediately before the commencement of this Constitution liable or treated as liable to any such tax shall, so long as that tax continues, continue to be liable or to be treated as liable, thereto.

206. Save in so far as Parliament may, by law, otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by Government or other person) which is—

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government; or

(b) consumed in the construction, maintenance or operation of a Union railway by the Government or a railway company operating that railway or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of a Union railway,

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of a Union railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

207. Subject as hereinafter provided, the Government of a State shall not be liable to Union taxation in respect of lands or buildings situate within the territory of India, or income accruing, arising or received within such territory:

Provided that—

(a) where a trade or business of any kind is carried on by or on behalf of the Government of a State, nothing in this article shall exempt that Government from any Union tax or the levy of a sum in lieu of such tax in respect of that trade or business or any operations connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof;

(b) nothing in this article shall exempt the Ruler of any State for the time being specified in Part III of the First Schedule from any Union tax in respect of lands, buildings or income being his personal property or personal income.

Explanation: For the purposes of this article, any operations incidental to the ordinary functions of the Government of a State, such as the sale of the forest produce of any forest under the control of the Government of a State or of any article produced in any jail within a State, shall not be deemed to be a trade or business carried on by or on behalf of the Government of the State.

208. Where under the provisions of this Constitution the expenses of any court or commission, or pensions payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India are charged on the revenues of India or the revenues of a State for the time being specified in Part I of the First Schedule, then if—

(a) in the case of a charge on the revenues of India, the court or commission serves any of the separate needs of a State so specified, or the person has served wholly or in part in connection with the affairs of such State; or

(b) in the case of a charge on the revenues of a State so specified, the court or commission serves any of the separate needs of the Union or another State so specified, or the person has served wholly or in part in connection with the affairs of the Union or another such State, there shall be charged on and paid out of the revenues of the State or, as the case may be, the revenues of India or of the other State, such contribution in respect of expenses or pensions as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

CHAPTER II—BORROWING

209. The executive power of the Union extends to borrowing upon the security of the revenues of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

210. (1) Subject to the provisions of this article, the executive power of a State for the time being specified in Part I of the First Schedule extends to borrowing within the territory of India upon the security of the revenues of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions, if any, as it may think fit to impose, make loans to States or so long as any limits fixed under the last preceding article are not exceeded, give guarantees in respect of loans raised by any State and any sums required for the purpose of making such loans shall be charged on the revenues of India.

(3) A State may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or its predecessor Government or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

A consent under this clause may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

CHAPTER III—PROPERTIES, CONTRACTS, LIABILITIES AND SUITS

211. As from the commencement of this Constitution, the Government of India and the Government of each State for the time being specified in Part I of the First Schedule shall respectively be the successors of the Government of the Dominion of India and of the corresponding Governors' Provinces as regards all property, assets and liabilities subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

212. (1) The executive power of the Union and of each State for the time being specified in Part I of the First Schedule shall extend, subject to any Act of the appropriate legislature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

(2) All property acquired for the purposes of the Union or of a State for the time being specified in Part I of the First Schedule shall vest in the Union or any such State, as the case may be.

213. (1) All contracts made in the exercise of the executive power of the Union or of a State for the time being specified in Part I of the First Schedule shall be expressed to be made by the President; or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

(2) Neither the President, nor the Governor of a State, shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to the Government of India heretofore in force, nor shall any person making or executing such contract or assurance on behalf of any of them be personally liable in respect thereof.

214. (1) The Government of India may sue or be sued by the name of the Government of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or by the Legislature of a State for the time being specified in Part I of the First Schedule, enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces might have sued or been sued if this Constitution had not been enacted.

(2) If at the date of commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Government of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province is a party, the corresponding State shall be deemed to be substituted for the Province in those proceedings.

February 3, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Maulavi Saiyid Muhammad Saadulla; (4) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee met on the 3rd February, 1948, after the 30th January, 1948, and considered the minutes of the meeting held on the latter date.

Clause 195-B as shown in Appendix A to those minutes was further revised and renumbered as clause 196 as shown in the Appendix to these minutes.

Clause 195-C was omitted.

It was decided that clauses 197 to 199 of the Draft Constitution should be revised as shown in the Appendix to these minutes.

Clause 200 as shown in Appendix B to those minutes was further revised as shown in the Appendix to these minutes.

It was decided that clauses 202 and 202-A as shown in Appendix B to those minutes should be further revised as shown in the Appendix to these minutes.

Clause 203 as shown in Appendix B to those minutes was further revised as shown in the Appendix to these minutes.

It was decided that a new clause 211-A as shown in the Appendix to these minutes should be inserted after clause 211 as shown in Appendix B to those minutes.

In sub-clause (1) of clause 214-A, the word "invasion" was omitted, and in sub-clause (3) of that clause the words "or by invasion" and the words "or of any invasion" were omitted.

Clauses 214-E and 214-F as shown in Appendix B to those minutes were revised as shown in the Appendix to these minutes.

Part X (containing clauses 214-G to 218) as shown in Appendix B to those minutes was further revised as shown in the Appendix to these minutes.

2. The committee then adjourned till 10 A.M. on the 4th February, 1948.

APPENDIX

196. (1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2) of this article, namely—

- (a) duties in respect of succession to property other than agricultural land;
- (b) estate duty in respect of property other than agricultural land;
- (c) terminal taxes on goods or passengers carried by railway or air;
- (d) taxes on railway fares and freights.

(2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to States for the time being specified in Part II of the First Schedule, shall not form part of the revenues of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among the States in accordance with such principles of distribution as may be formulated by Parliament by law.

197. (1) Taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2) of this article.

(2) Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to States for the time being specified in Part II of the First Schedule or the taxes payable in respect of Union emoluments, shall not form part of the revenues of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among the States in such manner and from such time as may be prescribed.

(3) For the purposes of clause (2) of this article, in each financial year such percentage as may be prescribed of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Union emoluments shall be deemed to represent proceeds attributable to States for the time being specified in Part II of the First Schedule.

(4) In this article—

- (a) "taxes on income" includes any sum levied by the Government of India in lieu of any tax on income as referred to in clause (a) of the proviso to article 207 of this Constitution but does not include a corporation tax;

(b) "prescribed" means—

- (i) until the Finance Commission has been constituted, prescribed by the President by order, and
- (ii) after the Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission.

(c) "Union emoluments" includes all emoluments and pensions payable out of the revenues of India in respect of which income tax is chargeable.

197-A. Notwithstanding anything contained in articles 196 and 197 of this Constitution, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the revenues of India.

*198. Union duties of excise shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the revenues of India to the States to which the law imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the States in accordance with such principles of distribution as may be formulated by such law.

198-A. Notwithstanding anything in article 198 of this Constitution, such proportion, as Parliament may by law determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of India, but shall be assigned to the States in which jute is grown in proportion to the respective amounts of jute grown therein.

199. Such sums, as Parliament may by law provide, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the revenues of India as grants-in-aid of the revenues of a State for the time being specified in Part I of the First Schedule such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the scheduled areas in that State to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the revenues of India as grants-in-aid of the revenues of the Province of Assam sums, capital and recurring, equivalent to—

- (a) the average excess of expenditure over the revenues during the three years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 19 of the Eighth Schedule; and
- (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the areas of that State.

200. (1) Notwithstanding anything in article 180 of this Constitution but subject to the provisions of clauses (2) and (3) of this article, the Legislature of a State shall have power to make laws with respect to taxes on professions, trades, callings and employments for the benefit of the State or of a municipality, district board, local board or other local authority therein.

*The committee is of opinion that there should be no constitutional prohibition regarding the duty on salt and its levy should be left to the discretion of Parliament.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum;

Provided that, in the financial year immediately preceding the commencement of this Constitution there was in force in any State or any such municipality, board or authority, a tax on professions, trades, callings or employments the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

202. (1) In the foregoing provisions of this Chapter, 'net proceeds' means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision in this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

202-A. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such other time as the President considers necessary, by order constitute a Finance Commission which shall consist of a chairman and four other members to be appointed by the President.

(2) Parliament may, by law, determine the qualifications which shall be requisite for appointment as members of the commission and the manner in which they shall be selected.

(3) It shall be the duty of the commission to make recommendations to the President as to—

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid to the States out of the revenues of India; and

(c) any other matter referred to the commission by the President for the purposes of sub-clauses (a) and (b) of this clause in the interest of sound finance.

(4) The commission shall determine its procedure and shall have such powers in the performance of its functions as Parliament may by law confer on it.

203. The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

211-A. Subject as hereinafter provided, any property in the territory of India except the territories for the time being specified in Part III of the First Schedule

which, if this Constitution had not come into operation, would have accrued to His Majesty by *escheat* or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State for the time being specified in Part I of the First Schedule, vest in such State for the purposes of the Government of that State, and shall, in any other case, vest in the Union for the purposes of the Government of India:

Provided that any property which at the date when it would have so accrued to His Majesty was in the possession or under the control of the Government of India or the Government of a State for the time being specified in Part I of the First Schedule shall, according as the purposes for which it was then used or held were purposes of the Union or of a State so specified, vest in the Union for the purposes of the Government of India or in the State for the purposes of the Government of that State.

*214-E. Where a Proclamation of Emergency has been issued under clause (1) of article 214-A of this Constitution, nothing in article 15 of this Constitution shall restrict during the period such proclamation is in operation the power of Parliament or the Legislature of any State to make any law or the power of the Government of India or the Government of any State to take any executive action which under this Constitution Parliament or such Legislature would otherwise be competent to make or such Government would otherwise be competent to take.

*214-F. Where a Proclamation of Emergency has been issued under clause (1) of article 214-A of this Constitution, the President may by order declare that the right guaranteed by article 28 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order.

†PART X—SERVICES

214-G. In this Part, unless the context otherwise requires, the expression 'State' means a State for the time being specified in Part I of the First Schedule.

215. Omitted.

216. Omitted.

216-A. No person who is a member of any civil service under or holds any civil post in connection with the affairs of, the Government of India or the Government of a State shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this article shall not apply—

- (a) where a person is dismissed, removed, or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where an authority empowered to dismiss a person or remove him or reduce him in rank is satisfied that for some reason to be recorded by that authority,

*The committee is of opinion that no provision should be made for suspension of the fundamental rights under article 15 or for suspension of the enforcement of such rights under article 28 where an emergency is declared by the Government of a State for the time being specified in Part III of the First Schedule as it will create unnecessary complications.

†The committee is of opinion that detailed provisions with regard to recruitment and conditions of service of persons in Defence Services or serving the Union or a State in a civil capacity should not be included in the Constitution but should be left to be regulated by Acts of the appropriate Legislature.

in writing it is not reasonably practicable to give that person an opportunity of showing cause.

217. (1) Acts of the appropriate Legislature may regulate—

- (a) recruitment to civil services, and civil posts in connection with the affairs of the Union or any State; and
 - (b) the conditions of service of persons serving in a civil capacity in connection with the affairs of the Union or of a State.
- (2) Until provision in that behalf is made under clause (1) of this article—
- (a) appointments to all civil services and civil posts shall be made—
 - (i) in the case of services of the Union and posts in connection with the affairs of the Union, by the President or such person as he may direct, and
 - (ii) in the case of services of a State, and posts in connection with the affairs of a State, by the Governor or such person as he may direct; and
 - (b) the conditions of service of persons serving in a civil capacity shall be such as may be prescribed—
 - (i) in the case of persons serving in connection with the affairs of the Union, by rules made by the President or by some person or persons authorised by the President; and
 - (ii) in the case of persons serving in connection with the affairs of a State, by rules made by the Governor of the State or by some person or persons authorised by the Governor.

218. Until other provision is made under the appropriate provisions of this Part of this Constitution, any rules which were in force immediately before the commencement of this Constitution and were applicable to any civil service or civil post which has continued to exist after the commencement of this Constitution as a service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution, and shall be deemed to be rules made under article 217 of this Constitution.

February 4, 1948

Present: (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Maulavi Saiyid Muhammad Saadulla; (4) Shri N. Madhava Rao.

In attendance: (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 3rd February, 1948.

Clause 198-A as shown in the Appendix to those minutes was further revised as shown in Appendix A to these minutes.

It was decided that for clauses 216-A, 217 and 218 as shown in the Appendix to those minutes, two clauses 217 and 218 as shown in Appendix A to these minutes, should be substituted.

2. The committee then resumed consideration of the Draft Constitution.

Clause 5: This clause was revised as shown in Appendix B to these minutes.

Clauses 172 and 172-A: These clauses were further considered by the committee. It was decided by a majority of the members that no change

need be made in clause 172, but that for sub-clauses (a) and (b) of clause 172-A, the following sub-clauses should be substituted, namely:

(a) as empowering the Legislature of a State for the time being specified in Part I or Part III of the First Schedule in which the court has its principal seat to abolish increase or restrict that jurisdiction;

(b) as empowering the Legislature of a State so specified having power to make laws for any such area to abolish that jurisdiction; or

Clause 180 : It was decided that this clause should be revised as shown in Appendix B to these minutes.

New clauses 180-E and 180-F : It was decided that two new clauses 180-E and 180-F as shown in Appendix B to these minutes should be inserted after clause 180-D as shown in the Appendix to the minutes of the meeting of the Drafting Committee held on the 28th January, 1948.

3. The committee then adjourned till 10 A.M. on the 5th February, 1948.

APPENDIX A

198-A. Notwithstanding anything in article 198 of this Constitution, such proportion, as Parliament may by law determine, of the net proceeds in each year of any export duty on jute or jute products shall not form part of the revenues of India, but shall be assigned to the States in which jute is grown in accordance with such principles of distribution as may be formulated by such law :

Provided that until Parliament so determine, there shall be assigned to the States in which jute is grown such proportion of the net proceeds in each year of such duty as may have been fixed in that behalf by an order of the Governor-General before the commencement of this Constitution, and the proceeds so assigned shall be distributed in accordance with the principles of distribution followed immediately before such commencement.

217. (1) Subject to the provisions of clause (2) of this article, Acts of the appropriate Legislature may regulate the recruitment, and the conditions of service of persons appointed, to public services, and to posts in connection with the affairs, of the Union or any State.

(2) No person who is a member of any civil service or holds any civil post in connection with the affairs of, the Government of India or the Government of a State shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this clause shall not apply---

(a) where a person is dismissed, removed, or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where an authority empowered to dismiss a person or remove him or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

218. Until other provision is made in this behalf under this Constitution, any rules which were in force immediately before the commencement of this Constitution and were applicable to any public service or any post which has continued to exist after the commencement of this Constitution as a service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

APPENDIX B

5. At the date of commencement of this Constitution, every person—

- (a) who, or either of whose parents, or any of whose grand-parents was born in the territory of India, and who (i) has not acquired the citizenship of any other State, or (ii) has not, during the year immediately preceding the first day of April, 1948, acquired a domicile in any other State, or
- (b) who, or either of whose parents, or any of whose grand-parents, was born in India as defined by the Government of India Act, 1935 as originally enacted and who has acquired a domicile in the territory of India,

shall be a citizen of India.

Explanation : A person shall, for the purposes of this article, be deemed to have his domicile in the territory of India—

- (a) if on a question arising as to the succession to his property and on such succession being regulated by the Indian Succession Act, 1925, he would have a domicile in the territory of India within the meaning of any of the provisions of sections 7 to 9, 13 to 16 and 18 of that Act, or
- *(b) if he has made and deposited a declaration in writing under his hand of his desire to acquire such domicile in the office of the District Magistrate and has been resident within the territory of India for at least one month immediately preceding the commencement of this Constitution.

180. (1) Notwithstanding anything in the two next succeeding clauses, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Ninth Schedule (hereinafter called the 'Union List').

(2) Notwithstanding anything in the next succeeding clause, Parliament and, subject to the preceding clause, the Legislature of any State for the time being specified in Part I of the First Schedule also, have power to make laws with respect to any of the matters enumerated in List III in the said Schedule (hereinafter called the 'Concurrent List').

(3) Subject to the two preceding clauses, the Legislature of any State for the time being specified in Part I of the First Schedule has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the said Schedule (hereinafter called the 'State List').

(4) Parliament has power to make laws with respect to matters enumerated in the State List for a State for the time being specified in Part II of the First Schedule or for territories specified in Part IV of that Schedule or for any other territory not specified in that Schedule but comprised within the territory of India, or any part of such State or territory.

180-E. Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List in the Ninth Schedule including a law imposing a tax not mentioned in any of such lists notwithstanding that such matter or tax is not specifically mentioned in the Union List.

180-F. Notwithstanding anything in this Chapter the power of Parliament to make laws for a State or a group of States for the time being specified in Part III of the First Schedule shall be subject to the terms of any agreement entered into in that behalf by the State or group of States with the Government of India and the limitations contained therein.

*The committee is of opinion that it will be necessary for the Constituent Assembly functioning as the Dominion Legislature to pass a law to the effect that a person may acquire a domicile following the procedure laid down in clause (b) of this Explanation, for otherwise difficulty may arise in taking action under that clause until the Constitution comes into force.

February 5, 1948

Present: (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Maulavi Saiyid Muhammad Saadulla; (4) Shri N. Madhava Rao.

In attendance: (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

The committee considered the minutes of the meeting held on the 4th February, 1948.

It was decided that the proviso to sub-clause (1) of clause 190-A as shown in Appendix A to the minutes of the meeting of the Drafting Committee held on the 29th January, 1948, should be omitted, and for the proviso at the end of that clause, the following proviso should be substituted:

Provided that the provisions of clauses (1) and (3) of this article shall not apply to public acts, records and judicial proceedings of, and the final judgment or order delivered or passed by civil courts in, any State for the time being specified in Part III of the First Schedule unless Parliament has, under the terms of any agreement entered into in that behalf by such State with the Union, power to make laws with respect to the matters enumerated in entries 2, 4 and 5 of the Concurrent List.

It was also decided that for sub-clause (6) of clause 192-B as shown in Appendix A to the said minutes, the following sub-clauses should be substituted :

(6) After considering any report made to him by the commission the President shall, subject as hereinafter provided, make orders in accordance with the report ;

(6a) If the commission in their report recommend or the President is otherwise satisfied that any of the issues involves a substantial question of law requiring a reference to the Supreme Court, the President shall before making orders under clause (6) of this article obtain the opinion of the Supreme Court on the question and make orders in accordance with such opinion.

Clause 198-A as shown in Appendix A to the minutes of the meeting held on the 4th February was further revised as shown in Appendix A to these minutes.

It was decided that a new clause 201-A as shown in Appendix A to these minutes should be inserted after clause 201 as shown in Appendix B to the minutes of the meeting of the Drafting Committee held on the 30th January, 1948.

It was also decided that clause 202-A as shown in the Appendix to the minutes of the meeting of the Drafting Committee held on the 3rd February, 1948, should be further revised as shown in Appendix A to these minutes.

Clause 5 as shown in Appendix B to the minutes of the meeting held on the 4th February, 1948, was further revised as shown in Appendix A to these minutes.

It was decided that clause 179 as shown in the Appendix to the minutes of the meeting of the Drafting Committee held on the 26th January, 1948, should be further revised as shown in Appendix A to these minutes.

It was also decided that for sub-clause (4) of clause 180 as shown in Appendix B to the minutes of the meeting held on the 4th February, 1948, the following sub-clause should be substituted, namely:

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included for the time being in Part I or Part III of the First Schedule notwithstanding that such matter is a matter enumerated in the State List.

Shri Alladi Krishnaswami Ayyar wanted that the clause dealing with the distribution of legislative powers should begin with the legislative power of the State. The committee however decided by a majority that the existing order in clause 180 as shown in Appendix B should be retained.

Clause 180-E as shown in Appendix B was further revised as shown in Appendix A to these minutes.

2. The committee thereafter resumed consideration of the Draft Constitution.

Sub-clauses (1), (2), (3) and (4) of clause 60, the consideration of which was held over, were first taken into consideration, and it was decided that two sub-clauses (1) and (2) as shown in Appendix B to these minutes should be substituted for these sub-clauses.

New clauses 225-A to 225-D : It was decided that new clauses 225-A to 225-D as shown in Appendix B to these minutes should be inserted in Part XII before clause 226 and that the heading of Part XII should be changed to "Special provision relating to minorities".

Clauses 226 to 230 : These clauses were revised as shown in Appendix B to these minutes.

Clause 230-A : It was decided that clause 53-A relating to protection of the President should be omitted and a new clause 230-A containing provisions relating to the protection of the President and Governors of States as shown in Appendix B to these minutes should be inserted before clause 231, and that clauses 231 and 231-A should be placed under a new Part, namely, "Part XII-A—Miscellaneous".

It was also decided that to clause 51-B the following new sub-clause should be added, namely:

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, the President have all the powers and immunities and be subject to all the duties of the President.

It was further decided that to clause 119-A the following sub-clause should be added, namely :

(3) The Deputy Governor shall, during, and in respect of, the period while he is so acting as, or discharging the functions of, the Governor have all the powers and immunities and be subject to all the duties of the Governor.

3. The committee then adjourned till 10 A.M. on the 6th February, 1948.

APPENDIX A

5. At the date of commencement of this Constitution—

- (a) every person who or either of whose parents or any of whose grand-parents was born in the territory of India as defined in this Constitution and who has neither acquired the citizenship of any other State before that date nor made his permanent abode in any other State after the first day of April 1947; and
- (b) every person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) or in Burma, Ceylon or Malaya, and who has his domicile in the territory of India as defined in this Constitution,

shall be a citizen of India.

Explanation : For the purposes of clause (b) of this article, a person shall be deemed to have his domicile in the territory of India—

- (i) if he would have had his domicile in such territory under Part II of the Indian Succession Act, 1925, had the provisions of that Part been applicable to him, or
- * (ii) if he has, before the date of commencement of this Constitution, deposited in the office of the District Magistrate a declaration in writing of his desire to acquire such domicile and has resided in the territory of India for at least one month before the date of the declaration.

PART VI—RELATIONS BETWEEN THE UNION AND THE STATES

Chapter I—Legislative Relations

Distribution of Legislative Powers

179. Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

180-E. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such powers shall include the power of making any law imposing a tax not mentioned in either of those Lists.

198-A. Notwithstanding anything in article 198 of this Constitution, such proportion, as Parliament may by law determine, of the net proceeds in each year of any export duty on jute or jute-products shall not form part of the revenues

*The committee is of opinion that auxiliary action whether by legislation or otherwise may be taken before the commencement of this Constitution for the receipt of declarations, keeping of registers of such declarations and other incidental matters for the purpose of clause (ii) of the Explanation.

of India, but shall be assigned to the States in which jute is grown in accordance with such principles of distribution as may be formulated by such law:

Provided that until Parliament so determine, there shall be assigned to those States out of the net proceeds of the duty such parts of the net proceeds and in such proportions as may have been fixed in that behalf immediately before the commencement of this Constitution.

201-A. (1) Notwithstanding anything contained in this Chapter, the Union may, subject to the provisions of clause (2) of this article, enter into an agreement with a State for the time being specified in Part III of the First Schedule with respect to the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter and when an agreement is so entered into the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.

(2) An agreement entered into under clause (1) of this article shall continue in force for a period not exceeding ten years from the commencement of this Constitution:

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission he considers it necessary to do so.

202-A. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such other time as the President considers necessary, by order constitute a Finance Commission which shall consist of a chairman and four other members to be appointed by the President.

(2) Parliament may, by law, determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds;
- (b) the continuance or modification of the terms of any agreement entered into by the Union with any State for the time being specified in Part III of the First Schedule as respects the levy, collection and distribution of any tax or duty leviable by the Government of India in such State;
- (c) the principles which should govern the grants-in-aid to the States out of the revenues of India; and
- (d) any other matter referred to the Commission by the President for the purposes of sub-clauses (a), (b) and (c) of this clause in the interest of sound finance.

(4) The Commission shall determine its procedure and shall have such powers in the performance of its functions as Parliament may by law confer on it.

APPENDIX B

60. (1) The Council of States shall consist of two hundred and fifty members of whom—

- (a) fifteen members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States:

Provided that the total number of representatives of States for the time being specified in Part III of the First Schedule shall not exceed forty per cent of this remainder.

(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having knowledge or practical experience of the following interests and services, namely:

(a) Culture, literature, art, education and such professional interest as may be defined by Parliament by law;

(b) Agriculture and allied interests including fisheries;

(c) Engineering and architecture;

(d) Public administration and social services,

and the number of persons to be so nominated representing the interests and services specified in each of the sub-clauses (a), (b), (c) and (d) of this clause shall be such as may be fixed by Parliament by law.

PART XII—SPECIAL PROVISIONS RELATING TO MINORITIES

225-A. Seats shall be reserved in the House of the People for—

(a) the Muslim community and the Scheduled Castes;

(b) the Scheduled Tribes in every State for the time being specified in Part I of the First Schedule; and

(c) the Indian Christian community in the States of Madras and Bombay, according to the scale prescribed in sub-clause (b) of clause (5) of article 60 of this Constitution.

225-B. Notwithstanding anything contained in article 60 of this Constitution, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People.

225-C. (1) Seats shall be reserved for—

(a) the Muslim community, the Scheduled Castes and the Scheduled Tribes (except the Scheduled Tribes in the autonomous districts of Assam) in the Legislative Assembly of every State for the time being specified in Part I of the First Schedule;

(b) the Indian Christian community in the Legislative Assemblies of the States of Madras and Bombay; and

(c) the autonomous districts in the Legislative Assembly of the State of Assam, according to the scale prescribed in clause (3) of article 130 of this Constitution.

(2) The number of seats reserved for any community in the Legislative Assembly of any State for the time being specified in Part I of the First Schedule shall bear, as nearly as may be, the same proportion to the total number of seats in that Assembly as the population of the community in the State bears to the total population of the State.

Explanation: All the Scheduled Castes in a State shall be deemed to be a single community for the purposes of this clause and so also all the Scheduled Tribes in a State.

(3) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(4) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district.

(5) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district **[except from the constituency comprising the cantonment and municipality of Shillong.]*

225-D. Notwithstanding anything contained in article 130 of this Constitution, the Governor of a State may, if he is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly of the State, nominate such number of members of the community to the Legislative Assembly as he considers appropriate.

226. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Part I of the First Schedule.

227. (1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before such commencement.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

228. During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the time being specified in Part I of the First Schedule for the benefit of the Anglo-Indian community in respect of education as were made in the financial year immediately before such commencement.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution, such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

229. (1) There shall be a Special Officer for minorities for the Union who shall be appointed by the President, and a Special Officer for minorities for each State for the time being specified in Part I of the First Schedule who shall be appointed by the Governor of the State.

(2) It shall be the duty of the Special Officer for the Union to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the Union and to report to the President upon the working of the safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before Parliament.

*The words within square brackets should be deleted if the words 'excluding the town of Shillong' is retained in item 1 of Part I of the table appended to paragraph 1 of the First Schedule to the Constitution.

(3) It shall be the duty of the Special Officer for a State so specified to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the State and to report to the Governor of the State upon the working of the safeguards at such intervals as the Governor may direct and the Governor shall cause all such reports to be laid before the Legislature of the State.

230. (1) The President may by order appoint a commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose by the Union or any State and the conditions subject to which such grants should be given, and the order appointing such commission shall define the procedure to be followed by the commission.

(2) A commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented, together with a memorandum explaining the action taken thereon to be laid before Parliament.

PART XII-A—MISCELLANEOUS

230-A. (1) The President or the Governor of a State shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties:

Provided that the conduct of the President may be brought under review of any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 49 of this Constitution:

Provided further that nothing in this clause shall be construed as restricting the rights of any person to bring against the Government of India or of a State such proceedings as are mentioned in Chapter III of Part IX of this Constitution.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President or the Governor of a State in any court during his term of office.

(3) No process for the arrest or imprisonment of the President or the Governor of a State shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President or the Governor of a State shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President or Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

February 6, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Maulavi Saiyid Muhammad Saadulla; (4) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 5th February, 1948.

It was decided that for sub-clauses (6) and (6a) of clause 192-B as shown in those minutes, the following sub-clauses should be substituted :

(6) After considering any report made to him by the commission the President shall, subject as hereinafter provided, make orders in accordance with the report ;

(6a) If upon consideration of the commission's report the President is of opinion that anything therein contained involves a substantial question of law, he shall refer the question to the Supreme Court under article 100 of this Constitution and on receipt of the opinion of the Supreme Court thereon shall, unless the Supreme Court has agreed with the commission's report, return the report to the commission together with the opinion and the commission shall thereupon make such modifications in the report as may be necessary to bring it in accord with such opinion and present the report as so modified to the President.

Clause 5 as shown in Appendix A to those minutes was further revised as shown in Appendix A to these minutes.

Clause 179 as shown in Appendix A to those minutes was also further revised as shown in Appendix A to these minutes.

For the proviso to clause 198-A as shown in Appendix A to those minutes, the following proviso was substituted :

Provided that until Parliament so determine, there shall be assigned to those States out of the net proceeds of the duty in each year such part thereof and in such proportions as may have been fixed in that behalf by any order made under the Government of India Act, 1935 and in force immediately before the commencement of this Constitution.

For sub-clause (3) of clause 202-A as shown in Appendix A to those minutes, the following sub-clause was substituted, namely :

(3) It shall be the duty of the commission to make recommendations to the President as to—

(a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, distributed between them under this Chapter and the allocation between the States of the respective shares of such proceeds;

(b) the principles which should govern the grants-in-aid to the States out of the revenues of India ;

(c) the continuance or modification of the terms of any agreement entered into by the Union with any State for the time being specified in Part III of the First Schedule as respects the levy, collection and distribution of any tax or duty leviable by the Government of India in such State ; and

(d) any other matter referred to the commission by the President in the interest of sound finance.

Clause 60 as shown in Appendix B to those minutes was further revised as shown in Appendix A to these minutes.

It was also decided that in sub-clause (3) of clause 130, after the words "last preceding census and shall" the words "save in the case of the autonomous districts of Assam" should be inserted.

It was further decided that clauses 112, 114, 115, 116, 120, 121 and 122 should be revised as shown in Appendix A to these minutes.

2. The committee thereafter resumed consideration of the Draft Constitution.

Preamble : It was decided that for the Preamble, the Preamble as shown in Appendix B to these minutes should be substituted.

Clause 232 : It was decided that this clause should be revised as shown in Appendix C to these minutes.

Clauses 233 to 237-A : These clauses were revised as shown in Appendix C to these minutes.

Clause 238 : It was decided that this clause should be omitted.

Clause 239 : No change was made in this clause as shown in Appendix C to these minutes.

Clause 240 : This clause was revised as shown in Appendix C to these minutes.

3. It was decided that it should be stated in the report of the committee to be submitted to the President of the Constituent Assembly that in the opinion of the committee the minority rights provided for in Part XII of the Constitution should be applicable also to States for the time being specified in Part III of the First Schedule, but as no provision to that effect could be laid down in the Constitution the States Ministry should see that necessary safeguards were provided for at the time of the execution of the Instrument of Accession by such States.

4. The committee then adjourned till 10 A.M. on the 9th February, 1948.

APPENDIX A

5. At the date of commencement of this Constitution—

(a) every person who or either of whose parents or any of whose grand-parents was born in the territory of India as defined in this Constitution and who has not made his permanent abode in any other State after the first day of April, 1947; and

(b) every person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted) or in Burma, Ceylon or Malaya, and who has his domicile in the territory of India as defined in this Constitution,

shall be a citizen of India, provided that he has not acquired the citizenship of any other State before the date of commencement of this Constitution.

Explanation : For the purposes of clause (b) of this article, a person shall be deemed to have his domicile in the territory of India—

(i) if he would have had his domicile in such territory under Part II of the Indian Succession Act, 1925, had the provisions of that Part been applicable to him, or

*(ii) if he has, before the date of commencement of this Constitution, deposited in the office of the District Magistrate a declaration in writing of his desire to acquire such domicile and has resided in the territory of India for at least one month before the date of the declaration.

60. (1) The Council of States shall consist of two hundred and fifty members of whom—

(a) fifteen members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States:

Provided that the total number of representatives of the States for the time being specified in Part III of the First Schedule shall not exceed forty per cent of this remainder.

†(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

(a) Literature, art, science and education;

(b) Agriculture, fisheries and allied subjects;

(c) Engineering and architecture;

(d) Public administration and social services.

(3) The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall—

(a) where the Legislature of the State has two Houses, be elected by the elected members of the Lower House;

(b) where the Legislature of the State has only one House; be elected by the elected members of that House; and

(c) where there is no House of the Legislature for the State, be chosen in such manner as Parliament may by law prescribe.

(4) The representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

112. The Governor of a State shall be elected by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State.

Alternatively

‡112. The Governor of a State shall be appointed by the President by warrant under his hand and seal from a panel of four candidates to be elected by the

*The committee is of opinion that auxiliary action whether by legislation or otherwise may have to be taken before the commencement of this Constitution for the receipt of declarations, keeping of registers of such declarations and other incidental matters for the purpose of clause (ii) of the Explanation.

†The committee is of opinion that not more than fifteen members should be nominated by the President to represent special interests in the Council of States and that no special representation for labour or commerce and industry is necessary in view of adult suffrage. The panel system of election hitherto in force under the Irish Constitution has proved very unsatisfactory in practice. In the absence of any other guidance in this matter the committee has provided for nomination by the President in place of election, while retaining a certain measure of functional representation. Since the committee has had to substitute nomination for election, the number of persons to be nominated has been reduced from 25 to 15.

‡Some of the members of the committee are strongly in favour of this alternative, because they consider that the co-existence of a Governor elected by the people and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in administration.

members of the Legislative Assembly of the State or where there is a Legislative Council in the State, by all the members of the Legislative Assembly and of the Legislative Council of the State assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

*114. A person who holds, or who has held, office as Governor shall be eligible for re-election/*re-appointment* to that office once, but only once.

115. (1) No person shall be eligible for election as Governor of a State unless he is a citizen of India and has completed the age of thirty-five years.

(2) A person shall not be eligible for election as a Governor if he holds any office or position of emolument under the Government of India or the Government of any State for the time being specified in the First Schedule, or under any local or other authority subject to the control of either Government.

Explanation: For the purposes of this clause a person shall not be deemed to hold any office or position of emolument by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

Alternatively

†115. No person shall be eligible for appointment as Governor of a State unless he is a citizen of India and has completed the age of thirty-five years.

†116. (1) The Governor shall not be a member either of Parliament or of the Legislature of any State for the time being specified in the First Schedule, and if a member of Parliament or of the Legislature of any such State be elected/*appointed* Governor, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as Governor.

**120. The Legislature of a State may make such provisions as it thinks fit/*the President may make such provisions as he thinks fit* for the discharge of the functions of the Governor of the State in any contingency not provided for in this Chapter.

*If the second alternative is adopted in article 112, the word “re-appointment” will have to be used in this article instead of the word “re-election.”

†If the second alternative is adopted in article 112, this alternative will have to be adopted in the present article.

‡If the second alternative is adopted in article 112, the word “appointed” will have to be used in clause (1) of this article instead of the word “elected”.

**If the second alternative is adopted in article 112, the words ‘The President may make such provisions as he thinks fit’ will have to be used in this article instead of the words ‘The Legislature of a State may make such provisions as it thinks fit.’

The committee is of opinion that whether the Governor is elected by the people or appointed by the President from a panel elected by the Legislature, it is unnecessary to have a Deputy Governor. Unlike the Vice-President at the Centre, the Deputy Governor cannot be made *ex-officio* Chairman of the Upper House, because in most of the States there will be no Upper House. The result is that the Deputy Governor will have no definite function to perform so long as the Governor is there. The only ground for creating the office of a Deputy Governor appears to be that there must be some person to step into the position of the Governor upon the occurrence of a sudden vacancy. The making of such a

*121. (1) An election/*An election to constitute a panel* for the purpose of filling a vacancy caused by the expiration of the term of office of a Governor shall be completed before the expiration of the term.

(2) An election/*An election to constitute a panel* for the purpose of filling a vacancy in the office of Governor occurring by reason of his death, resignation, removal or otherwise shall be held as soon as possible after the occurrence of the vacancy and the person elected/*appointed* to fill the vacancy shall be entitled to hold office for the full term of five years as provided in article 113 of this Constitution.

†122. (1) All doubts and disputes arising out of or in connection with the election of a Governor/*the election to constitute a panel for the purpose of the appointment of a Governor* shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) Subject to the provisions of this Constitution, the Legislature of the State may, by law, regulate any matter relating to or connected with the election of a Governor/*the election to constitute a panel for the purpose of the appointment of a Governor*.

179. (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) Without prejudice to the generality of the powers conferred by the preceding clause, no law made by Parliament shall, on the ground that it would have extra-territorial operation, be deemed to be invalid.

APPENDIX B

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN INDEPENDENT STATE, and to secure to, or promote among, all its citizens:

JUSTICE social, economic and political;

LIBERTY of thought, expression, belief, faith, worship, vocation, association and action;

EQUALITY of status, and of opportunity; and

FRATERNITY assuring the dignity of every individual without distinction of caste or creed,

IN OUR CONSTITUENT ASSEMBLY this...of...(day of May, 1948 A.D.), do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

provision can be left to the Legislature of the State or to the President as the case may be; e.g., the Legislature or the President may provide in advance that, in the event of a sudden vacancy occurring in the office of the Governor, the Chief Justice shall discharge the functions of the Governor. (cf. Paragraph 6 of the Letters Patent constituting the office of the Governor-General of the Union of South Africa, where it is provided that the Chief Justice of South Africa may, in certain contingencies, exercise the powers of the Governor-General.)

*If the second alternative is adopted in article 112, then the words 'An election to constitute a panel' will have to be used in clauses (1) and (2) of this article instead of the words 'An election' and the word 'appointed' will have to be used in clause (2) of this article instead of the word 'elected'.

†If the second alternative is adopted in article 112, then the words "the election to constitute a panel for the purpose of the appointment of a Governor" will have to be used in clauses (1) and (2) of this article instead of the words "the election of a Governor".

APPENDIX C

PART XIII—AMENDMENT OF THE CONSTITUTION

232. (1) An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given, the Bill containing such amendment shall come into operation:

Provided that if such amendment seeks to make any change in—

- (a) the Union List;
- (b) the representation of States in Parliament; or
- (c) the powers of the Supreme Court,

the amendment shall also require to be ratified by the Legislatures of States representing a majority of the population of all the States for the time being specified in Part I and Part III of the First Schedule in which States representing at least one-third of the population of the States for the time being specified in Part III of the First Schedule are included.

(2) Notwithstanding anything in the last preceding clause and subject to the provisions of the next succeeding clause, an amendment of the Constitution seeking to make any change in Chapter III of Part V of this Constitution in relation to any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose in the Legislative Assembly of the State or where the State has a Legislative Council, in either House of the Legislature of the State, and when the Bill is passed by the Legislative Assembly or where the State has a Legislative Council, by both Houses of the Legislature of the State, by a majority of the total membership of the Assembly or each House, as the case may be, it shall be submitted to Parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House it shall be presented to the Governor for assent and upon assent being given by the Governor or the President the Bill containing such amendment shall come into operation.

(3) Notwithstanding anything contained in the two preceding clauses, the provisions of this Constitution relating to the reservation of seats for the Muslim community, the Scheduled Castes, the Scheduled Tribes, the Indian Christian community or the Sikh community either in Parliament or in the Legislature of any State for the time being specified in Part I of the First Schedule, shall not be amended within the period of ten years from the commencement of this Constitution and shall cease to have effect on the expiration of that period unless continued in operation by an amendment of the Constitution in the manner provided in clause (1) of this article.

Explanation I: For the purposes of clause (1) of this article, the proposed amendment shall be deemed to be ratified by the Legislature of a group of States for the time being specified in Part III of the First Schedule if it is ratified by the majority of the Legislatures of the States in the group.

Explanation II: In clause (1) of this article, the expression "population" means the population as ascertained at the last preceding census.

PART XIV—TRANSITIONAL PROVISIONS

233. (1) Subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) The President may, by order, provide that, as from such date as may be specified in the order, any law in force in the territory of India or in any part of such territory shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications whether by way of repeal or amendment as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution and any such adaptation or modification shall not be questioned in any court of law.

234. (1) The Chief Justice and all other judges of the Federal Court holding offices immediately before the commencement of this Constitution shall on such commencement become the Chief Justice of India and judges of the Supreme Court respectively and shall be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 88 of this Constitution in respect of the judges of the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they have been delivered or made by the Supreme Court.

(3) On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of, by the Supreme Court.

(4) Further provision may be made by Parliament by law to give effect to the provisions of this article.

235. All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of India shall continue to exercise their respective functions subject to the provisions of this Constitution.

236. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under this Constitution, the Constituent Assembly of the Dominion of India shall itself exercise all the powers and perform all the duties conferred on Parliament and may in particular make law for securing the due constitution of the two Houses of Parliament and for providing for all matters relating to or connected with elections to either House of Parliament including the delimitation of constituencies and for such other ancillary and consequential matters as may be deemed necessary for the purpose of giving effect to the provisions of this Constitution.

Explanation: For the purposes of this clause, the Constituent Assembly of the Dominion of India includes members chosen to fill casual vacancies in that Assembly in accordance with rules made in that behalf by the Assembly, but shall not include any members representing any territory not included in the First Schedule.

(2) The Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker of such Assembly functioning under clause (1) of this article.

*(3) Such person as the Constituent Assembly of the Dominion of India shall

*Two members of the committee, Dr. B. R. Ambedkar and Shri Alladi Krishnaswami Ayyar, are of opinion that for clause (3) of article 236, the following clause should be substituted:

have elected in this behalf shall be the provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part IV of this Constitution and has entered upon his office.

(4) All persons holding office as Ministers for the Dominion of India immediately before the commencement of this Constitution shall after commencement become members of the Council of Ministers of the provisional President under this Constitution.

237. (1) Until the House or Houses of the Legislature of each State for the time being specified in Part I of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.

(2) Any person holding office as Speaker of the Legislative Assembly or President of the Legislative Council of a Province immediately before the commencement of this Constitution shall after such commencement become the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, of the corresponding State for the time being specified in Part I of the First Schedule.

(3) Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor had been elected in accordance with the provisions of Chapter II of Part V of this Constitution and has entered upon his office.

(4) All persons holding office as Ministers in a Province immediately before the commencement of this Constitution shall after such commencement become members of the Council of Ministers of the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule.

(5) The Chief Justice and other judges of a High Court in any Province holding offices immediately before the commencement of this Constitution shall on such commencement become the Chief Justice and judges respectively of the High Court in the corresponding State and shall be entitled to such salaries and allowances and to such rights in respect of leave and pension as are provided for under article 165 of this Constitution in respect of judges of such High Court.

237-A. (1) Subject to the provisions of clause (1) of article 236 of this Constitution, the President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935 to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of variation, addition, or repeal, as he may deem to be necessary or expedient:

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part IV of this Constitution.

(2) Every order made under clause (1) of this article shall be laid before each House of Parliament.

238. (Omitted.)

(3) The President of the Constituent Assembly of India shall become the provisional President of the Union until a President has been elected in accordance with the provisions contained in Chapter I of Part IV of this Constitution and has entered upon his office.

239. This Constitution shall come into force on...

240. The Indian Independence Act, 1947, and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946 and all other enactments amending or supplementing the Government of India Act, 1935 shall cease to have effect.

February 9, 1948

Present : (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Maulavi Saiyid Muhammad Saadulla; (4) Shri N. Madhava Rao.

In attendance : (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 6th February, 1948.

It was decided that for the footnote to sub-clause (2) of clause 60 as shown on page 7 in Appendix A to those minutes, the following footnote should be substituted:

The committee is of opinion that not more than fifteen members should be nominated by the President to represent special interests in the Council of States and that no special representation for labour or commerce and industry is necessary in view of adult suffrage. It is understood that the panel system of election hitherto in force under the Irish Constitution has proved very unsatisfactory in practice. In the absence of any other guidance in this matter the committee has provided for nomination by the President in place of election, while retaining a certain measure of functional representation. Since the committee has had to substitute nomination for election and as the committee thinks that no special representation for labour or commerce and industry is necessary, the committee is of opinion that it would be enough to provide for fifteen nominated members.

For sub-clause (2) of clause 115 as shown in Appendix A to those minutes, the following sub-clause was substituted, namely:

(2) A person shall not be eligible for election as a Governor of a State—
(a) if he is disqualified for being chosen as a member of the Legislative Assembly of the State;

Provided that it shall not be necessary for any such person to be a resident of the State; or

(b) if he holds any office or position of emolument under the Government of India or the Government of any State for the time being specified in the First Schedule, or under any local or other authority subject to the control of either Government.

The alternative clause 115 as shown on page 10 in Appendix A to those minutes was renumbered as sub-clause (1) of that clause and to the said sub-clause as so renumbered, the following sub-clause (2) was added:

(2) A person shall not be eligible for appointment as Governor of a State if he is disqualified for being chosen as a member of the Legislative Assembly of the State :

Provided that it shall not be necessary for any such person to be a resident of the State.

For sub-clause (2) of clause 179 as shown in Appendix A to those minutes, the following sub-clause was substituted :

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

The Preamble as shown in Appendix B to those minutes was further revised as shown in the Appendix to these minutes.

Clause 232 as shown in Appendix C to those minutes was further revised as shown in the Appendix to these minutes.

Sub-clauses (1) and (2) of clause 234 as shown in Appendix C to those minutes were further revised as shown in the Appendix to these minutes. Further consideration of sub-clause (3) of that clause was postponed till the next meeting of the committee.

It was decided that for sub-clause (2) of clause 102 as shown in Appendix A to the minutes of the meeting of the Drafting Committee held on the 24th January, 1948, the following sub-clause should be substituted :

(2) The minimum number of judges who are to sit for finally determining any case or for the purpose of hearing any reference under article 100 of this Constitution shall be five :

Provided that it shall be open to every judge of the court to sit for the said purposes unless owing to illness, personal interest or other sufficient cause he is unable to do so :

Provided further that rules made under this article may provide that a smaller number of judges may sit for the purpose of disposing of applications for bail, applications for stay of proceedings and other interlocutory matters.

2. The committee then adjourned till 10 A.M. on the 10th February, 1948.

APPENDIX

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN INDEPENDENT STATE, and to secure to all its citizens :

JUSTICE social, economic and political;

LIBERTY of thought, expression, belief, faith, worship, vocation, association and action; and

EQUALITY of status, and of opportunity; and to promote among all its citizens

FRATERNITY without distinction of caste, class or creed so as to assure the dignity of every individual and the unity of the Nation,

IN OUR CONSTITUENT ASSEMBLY this _____ of _____ (_____ day of May, 1948 A.D.), do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

PART XIII—AMENDMENT OF THE CONSTITUTION

*232. (1) An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill as so assented to:

Provided that if such amendment seeks to make any change in—

- (a) any of the Lists in the Ninth Schedule;
- (b) the representation of States in Parliament; or
- (c) the powers of the Supreme Court,

the amendment shall also require to be ratified by the Legislatures of States representing a majority of the population of all the States for the time being specified in Part I and Part III of the First Schedule :

Provided further that the ratifying States shall include States for the time being specified in Part III of the First Schedule representing at least one-third of the population of all the States for the time being specified in that Part.

(2) Notwithstanding anything in the last preceding clause and subject to the provisions of the next succeeding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the number of Houses in the Legislature of any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose in the Legislative Assembly of the State or where the State has a Legislative Council, in either House of the Legislature of the State, and when the Bill is passed by the Legislative Assembly or where the State has a Legislative Council, by both Houses of the Legislature of the State, by a majority of the total membership of the Assembly or each House, as the case may be, it shall be submitted to Parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House it shall be presented to the President for assent and upon assent being given by the President to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill as so assented to.

(3) Notwithstanding anything contained in the two preceding clauses, the provisions of this Constitution relating to the reservation of seats for the Muslim community, the Scheduled Castes, the Scheduled Tribes, the Indian Christian community or the Sikh community either in Parliament or in the Legislature of any State for the

*The committee is of opinion that item (a) of the proviso to clause (1) of this article should contain reference to all the Lists in the Ninth Schedule and not only to the Union List.

The committee is also of opinion that provision should be included in this article for enabling the Legislature of a State in Part I of the First Schedule to initiate a Bill for the amendment of the provisions of this Constitution relating to the number of Houses in the Legislature of such State provided such Bill is passed by an absolute majority of the Legislature of such State and is thereafter ratified by Parliament by an absolute majority, and has inserted clause (2) in this article for the purpose.

time being specified in Part I of the First Schedule, shall not be amended within the period of ten years from the commencement of this Constitution and shall cease to have effect on the expiration of that period unless continued in operation by an amendment of the Constitution in the manner provided in clause (1) of this article.

Explanation I: For the purposes of clause (1) of this article, the proposed amendment shall be deemed to be ratified by the Legislature of a group of States for the time being specified in Part III of the First Schedule if it is ratified by the majority of the Legislatures of the States in the group.

Explanation II: In clause (1) of this article, the expression 'population' means the population as ascertained at the last preceding census.

234. (1) The judges of the Federal Court holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 88 of this Constitution in respect of the judges of the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

February 10, 1948

Present: (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Maulavi Saiyid Muhammad Saadulla; (4) Shri N. Madhava Rao.

In attendance: (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee considered the minutes of the meeting held on the 9th February, 1948.

Shri Alladi Krishnaswami Ayyar was, however, of the opinion that the provisions of sub-clause (2) of clause 102 should not be made applicable to all cases but should be restricted in its application to constitutional cases and to references by the President under article 100.

It was decided that the following footnote should be added to the Preamble as shown in the Appendix to those minutes:

The committee has followed the Objectives Resolution in drafting the Preamble. In the opinion of the committee, the Preamble as drafted will not preclude the Union of India from remaining within the Commonwealth if the Constituent Assembly so decides.

Clause 232 as shown in the Appendix to those minutes was further revised as shown in Appendix A to these minutes.

2. The committee thereafter resumed consideration of the minutes of the meeting held on the 6th February 1948.

It was decided that sub-clause (3) of clause 234 as shown in Appendix C to those minutes should be retained, but the following footnote to that sub-clause should be inserted :

The committee thinks that all appeals and other proceedings pending before His Majesty in Council should be finally disposed of by the time the Constitution comes into operation. If, however, some appeals or other proceedings remain pending before His Majesty in Council at the time of the commencement of the Constitution and any difficulty is experienced with regard to their transfer to, or disposal by, the Supreme Court, the President may pass necessary orders under the 'Removal of difficulties' clause (Article 237A).

Sub-clause (3) of clause 237 as shown in Appendix C to those minutes was further revised as follows :

(3) Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been elected/**appointed* in accordance with the provisions of Chapter II of Part V of this Constitution and has entered upon his office.

Sub-clause (5) of clause 237 was further revised as follows :

(5) The judges of a High Court in any Province holding office immediately before the date of the commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 165 of this Constitution in respect of the judges of such High Court.

3. It was decided that clauses 53 and 123 should be further revised as shown in Appendix B to these minutes.

It was also decided that after clause 180-A, a new clause 180-AA and after clause 180-E a new clause 180-EE should be inserted as shown in Appendix B to these minutes.

4. The committee thereafter took up the consideration of the Ninth Schedule.

Items 1 to 70 of List I of the said Schedule were revised as shown in Appendix C to these minutes.

It was decided that item 52 of the said List would be further considered by the committee at its next hearing.

5. The committee then adjourned till 10.30 A.M. on the 11th February, 1948.

*If the second alternative is adopted in article 112, the word "appointed" will have to be used in this clause instead of the word "elected".

APPENDIX A

PART XIII—AMENDMENT OF THE CONSTITUTION

232. (1) An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in *(a) any of the Lists in the Ninth Schedule; (b) the representation of States in Parliament; or (c) the powers of the Supreme Court, the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Part I of the First Schedule and the Legislatures of not less than one-third of the States for the time being specified in Part III of that Schedule.

†(2) Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of the Constitution relating to the ‡method of choosing a Governor or the number of Houses of the Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose in the Legislative Assembly of the State or where the State has a Legislative Council, in either House of the Legislature of the State, and when the Bill is passed by the Legislative Assembly or where the State has a Legislative Council, by both Houses of the Legislature of the State, by a majority of the total membership of the Assembly or each House, as the case may be, it shall be submitted to Parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House it shall be presented to the President for assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

(3) Notwithstanding anything contained in the two preceding clauses, the provisions of this Constitution relating to the reservation of seats for the Muslims, the Scheduled Castes, the Scheduled Tribes, the Indian Christians or the Sikhs either in Parliament or in the Legislature of any State for the time being specified in Part I of the First Schedule, shall not be amended within the period of ten years from the commencement of this Constitution and shall cease to have effect on the expiration of that period unless continued in operation by an amendment of the Constitution.

Explanation: Where a group of States is for the time being specified in Part III of the First Schedule, the entire group shall be deemed to be a single State for the purposes of the proviso to clause (1) of this article.

*The committee is of opinion that item (a) of the proviso to clause (1) of this article should contain reference to all the Lists in the Ninth Schedule.

†The committee is also of opinion that provision should be included in this article for enabling the Legislature of a State in Part I of the First Schedule to initiate a Bill for the amendment of the provisions of this Constitution relating to the choosing of the Governor and the number of Houses of the Legislature in such State provided such Bill is passed by an absolute majority of the Legislature of such State and is thereafter ratified by Parliament by an absolute majority, and has inserted clause (2) in this article for the purpose.

‡The words "the method of choosing a Governor or" should be retained in this clause only if the second alternative in article 112 is not adopted.

APPENDIX B

53. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

- (a) in all cases where the punishment or sentence is by a Court Martial ;
- (b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws ;
- *(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) of this article shall take away the power conferred by law on any officer of the Armed Forces of India to suspend, remit or commute a sentence passed by a Court Martial.

123. The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence, of any person convicted of any offence against any law relating to a matter with respect to which the Legislature of the State has power to make laws.

180-AA. Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List.

180-EE. Notwithstanding anything in clause (1) of article 180 of this Constitution—

- (a) Parliament shall not have power to make laws with respect to any right relating to Posts and Telegraphs in any State or group of States for the time being specified in Part III of the First Schedule subsisting at the date of the commencement of this Constitution until such right is extinguished by agreement between the Government of India and that State or group of States or is acquired by the Government of India :

Provided that nothing in this article shall prevent Parliament from making any law for the regulation and control of Posts and Telegraphs in such State or group of States ;

- (b) the power of Parliament to make laws with respect to telephones, wireless, broadcasting and other like forms of communications in any State for the time being specified in Part III of the First Schedule shall extend only to the making of laws for their regulation and control ;
- (c) the power of Parliament to make laws with respect to corporations shall not include the power to make laws with respect to the incorporation, regulation and winding up of corporations owned or controlled by a State for the time being specified in Part III of the First Schedule and carrying on business only within that State.

APPENDIX C

NINTH SCHEDULE

[Article 180]

List I—Union List

1. The defence of the territory of India and of every part thereof and generally all preparation for defence, as well as such acts as may be conducive in times of

*The committee is of opinion that the President should have power to suspend, remit or commute a death sentence passed not only in the States for the time being

war to its successful prosecution and after its termination to effective demobilization.

*2. Omitted.

3. Central Intelligence Bureau.

4. Preventive detention in the territory of India for reasons †connected with defence, external affairs or security of India.

5. The raising, training, maintenance and control of Naval, Military and Air Forces and their employment; the strength, organization and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule.

6. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

7. Naval, Military and Air Force works.

8. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.

9. Arms, firearms, ammunition and explosives.

10. Atomic energy and mineral resources essential to its production.

11. Foreign Affairs: all matters which bring the Union into relation with any foreign country.

12. Diplomatic, consular and trade representation.

13. United Nations Organisation.

14. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.

15. War and Peace.

16. The entering into and implementing of treaties and agreements with foreign countries.

17. Trade and commerce with foreign countries.

18. Foreign loans.

19. Citizenship, naturalization and aliens.

20. Extradition.

21. Passports and visas.

22. Foreign jurisdiction.

23. Piracies, felonies and offences against the law of nations committed on the high seas and in the air.

24. Admission into, and emigration and expulsion from, the territory of India.

25. Pilgrimages to places beyond India.

26. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.

27. Import and export across customs frontiers as defined by the Government of India.

28. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and

specified in Part I of the First Schedule but also in States for the time being specified in Part III of that Schedule.

*The committee has omitted the item 'Requisitioning of lands for purposes of defence including training and manoeuvres' as the matter contained therein will be covered by item 44.

†The words 'reasons connected with defence, external affairs or security of India' have been substituted for the words 'reasons of State' in this item to avoid conflict with item 1 of the State List relating to preventive detention for reasons connected with the maintenance of public order.

any other institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

29. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.

30. Airways ; aircraft and air navigation ; provision of aerodromes ; regulation and organization of air traffic and of aerodromes ; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

31. National highways declared to be such by Parliament by law.

32. Shipping and navigation in inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways ; carriage of passengers and goods on such waterways.

33. (a)*Posts and telegraphs ;

(b) †Telephones, wireless, broadcasting and other like forms of communication,

(c) Post Office Savings Bank.

34. Union Railways ; the regulation of all railways other than minor railways in respect of the safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers ; the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

35. Maritime shipping and navigation, including shipping and navigation on tidal waters ; provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.

36. Admiralty jurisdiction.

37. Ports declared to be major ports by or under law made by Parliament or existing law including their delimitation, and the constitution and powers of port authorities therein.

‡38. Omitted.

39. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.

40. Carriage of passengers and goods by sea or by air.

41. The Survey of India, the Geological, Botanical and Zoological Surveys of India ; Union Meteorological Organisations.

42. Inter-State quarantine.

§43. Constitution, organization, jurisdiction and powers of the Supreme Court, and fees taken therein.

*For restrictions on the power of Parliament to make laws with respect to 'Posts and Telegraphs' in relation to States for the time being specified in Part III of the First Schedule, *see* article 180-EE.

†For restrictions on the power of Parliament to make laws with respect to 'telephones, wireless, broadcasting and other like forms of communication' in relation to States for the time being specified in Part III of the First Schedule, *see* article 180-EE.

‡This item has been omitted as the subject-matter contained therein has been included in item 30.

§The committee is of opinion that the reference to 'Federal Judiciary' should be omitted from this item as there should not be parallel judiciaries. The committee has, however, inserted a new article 180-AA providing power to Parliament to establish additional courts for the better administration of the laws made by Parliament and existing laws with respect to matters in the Union List on the lines of Section 101 of the British North America Act, 1867.

*44. Acquisition or requisitioning of property for the purposes of the Union subject to the provisions of List III with respect to regulation of the principles on which compensation is to be paid for property acquired or requisitioned for the purposes of the Union or a State.

45. Union agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

46. Census.

47. Offences against laws with respect to any of the matters in this List.

48. Inquiries, surveys, and statistics for the purposes of the Union.

49. Union Public Services and Union Public Service Commission.

50. Industrial disputes concerning Union employees.

51. Reserve Bank of India.

52. Property of the Union and the revenue therefrom, but as regards property situated in a State subject always to legislation by the State, save in so far as Parliament by law otherwise provides.

53. Public debt of the Union.

54. Currency, foreign exchange, coinage and legal tender.

55. Provision for dealing with grave emergencies in any part of the territory of India affecting the Union.

56. Insurance.

†57. Corporation that is to say, the incorporation, regulation and winding up of trading corporations, including banking, insurance and financial corporations or co-operative societies, and of corporations, whether trading or not, with objects not confined to one State, but not including universities.

58. Banking.

59. Cheques, bills of exchange, promissory notes and other like instruments.

60. Patents, copyright, inventions, designs, trademarks and merchandise marks.

‡61. Ancient and historical monuments declared by Parliament by law to be of national importance; archaeological sites and remains.

62. Establishment of standards of weight and measure.

63. Opium, so far as regards cultivation and manufacture or sale for export.

64. Petroleum and other liquids and substances declared by Parliament by law to be dangerously inflammable, so far as regards possession, storage and transport.

65. Development of industries where development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

66. Regulation of labour and safety in mines and oilfields.

67. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

68. Extension of the jurisdiction of a High Court in any State for the time being specified in Part I of the First Schedule to any area outside the State.

*The committee is of opinion that the principle on which compensation is to be paid for the acquisition or the requisitioning of property should be the subject-matter of the Concurrent List and this item has been revised accordingly.

†For restrictions on the power of Parliament to make laws with respect to 'Corporations' in relation to States for the time being specified in Part III of the First Schedule, see article 180-EE.

‡The committee is of opinion that ancient and historical monuments declared by Parliament by law to be of national importance should be mentioned in this item and not any and every Ancient and Historical Monument.

69. Extension of the powers and jurisdiction of members of a police force belonging to any part of a State for the time being specified in Part I or Part II of the First Schedule to any area in any other State so specified, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the State; extension of powers and jurisdiction of members of a force belonging to any State to railway areas outside that State.

70. Elections to Parliament and of the President and Deputy President and Election Commission to superintend, direct and control all elections to Parliament and to the Legislatures of States for the time being specified in Part I of the First Schedule and to the offices of President, Vice-President and Governor subject to the provisions of this Constitution.

February 11, 1948

Present: (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Maulavi Saiyid Muhammad Saadulla.

In attendance: (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee resumed consideration of the Ninth Schedule.

Items 70 to 83 of List I were revised as shown in the Appendix to these minutes.

After item 83 of List I a new item 83-A as shown in the Appendix to these minutes was inserted to give effect to the recommendations of the Expert Committee on the Financial Provisions.

Items 84 to 90 of List I were revised as shown in the Appendix to these minutes.

Lists II and III were revised as shown in the Appendix to these minutes.

**The First, Second and Third Schedule:* These three schedules were revised as shown in the Appendix to these minutes.

The Fourth Schedule: This schedule was omitted.

**The Fifth Schedule:* This schedule was revised as shown in the Appendix to these minutes.

The Sixth Schedule: This schedule was omitted.

2. The committee thereafter adjourned till 10.30 A.M. on the 13th February, 1948.

APPENDIX

70. Elections to Parliament and of the President and Deputy President and Election Commission to superintend, direct and control all elections to Parliament and to the offices of President and Vice-President subject to the provisions of this Constitution.

**The First, Second, Third and Fifth Schedules have not been reproduced in the Appendix.*

71. The emoluments and allowances and rights in respect of leave of absence of the President, the salaries of the Ministers for the Union and of the Chairman and Vice-Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People ; the salaries, allowances and privileges of the members of Parliament ; the salary, allowances and the conditions of service of the Auditor-General of India.

72. The enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament.

73. Duties of customs including export duties.

74. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption ;

(b) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

*but including medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this paragraph.

75. Corporation tax.

76. Lotteries organized by the Government of India or the Government of any State.

77. Migration from one State to another.

78. Jurisdiction and powers of all courts, other than the Supreme Court, with respect to any of the matters in this List.

79. Taxes on income other than agricultural income.

80. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies ; taxes on the capital of companies.

81. Duties in respect of succession to property other than agricultural land.

82. Estate duty in respect of property other than agricultural land.

83. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

†83-A. Stock Exchanges and futures markets and taxes other than stamp duties on transactions in them.

84. Terminal taxes on goods or passengers, carried by railway or air ; taxes on railway fares and freights.

85. The development of inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power.

86. Inter-State trade and commerce subject to the provisions of entry 26A of List II.

87. Fishing and fisheries beyond territorial waters.

88. Manufacture and distribution of salt by Union agencies ; regulation and control of manufacture and distribution of salt by other agencies.

89. Fees in respect of any of the matters in this List, but not including fees taken in any court.

*The committee is of opinion that duties of excise on medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry should be included in this entry as duty leviable by the Union, as it thinks that uniform rate of excise duties should be fixed in respect of these goods in all States for the development of pharmaceutical industry. The levy of different rates of such duties in different States is likely to lead to a discrimination in favour of goods imported which is detrimental to the interests of Indian manufacturers as was pointed out by the Drugs Enquiry Committee in their report in 1931.

†This entry has been inserted to give effect to the recommendation of the Expert Committee on Financial Provisions.

LIST II—STATE LIST

1. Public order (but not including the use of naval, military or air forces in aid of the civil power); preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

1-A. The administration of justice; constitution and organization of all courts, except the Supreme Court, and fees taken therein.

2. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this List; procedure in the Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

5. Public debt of the State.

6. State Public Services and State Public Service Commissions.

7. Works, lands and buildings vested in or in the possession of the State.

8. Compulsory acquisition of land except for the purposes of the Union subject to the provisions of List III with respect to regulation of the principles on which compensation is to be paid for property acquired or requisitioned for the purposes of a State.

9. Libraries, museums and other similar institutions controlled or financed by the State.

*10. Elections to the Legislature of the State and of the Governor of the State for the constitution of a panel for the purpose of the appointment of a Governor for the State and Election Commission to superintend, direct and control such elections subject to the provisions of this Constitution.

11. The emoluments and allowances and rights with respect to leave of absence of the Governors of the States for the time being specified in Part I of the First Schedule, salaries and allowances of the Ministers for such States, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof; the salaries, allowances and privileges of the members of the Legislatures of such States.

11-A. The enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislatures of States for the time being specified in Part I of the First Schedule.

12. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

13. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

14. Pilgrimages, other than pilgrimages to places beyond India.

15. Burials and burial grounds; cremations and cremation grounds.

16. Education including universities other than those specified in entry 29 of List I.

17. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard

*The words 'for the constitution of a panel for the purpose of the appointment of a Governor for the State' will have to be used for the words 'of the Governor of the State' in this entry if the second alternative is adopted in article 131.

to such waterways ; ports, subject to the provisions in List I with regard to major ports ; vehicles other than mechanically propelled vehicles.

18. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 85 of List I.

19. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

19-A. Improvement of stock and prevention of animal diseases ; veterinary training and practice.

19-B. Ponds and the prevention of cattle trespass.

20. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant and the collection of rents ; transfer and alienation of agricultural land ; land improvement and agricultural loans ; colonization.

20-A. Courts of Wards ; encumbered and attached estates.

20-B. Treasure trove.

21. Forests.

22. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

23. Fisheries.

24. Protection of wild birds and wild animals.

25. Gas and gasworks.

26. Trade and commerce within the State ; markets and fairs.

26-A. Regulation of trade, commerce and intercourse with other States for the purposes of the provisions of article 242 of this Constitution.

27. Money lending and money lenders ; relief of agricultural indebtedness.

28. Inns and inn-keepers.

29. Production, supply and distribution of goods.

29-A. Development of industries, subject to the provisions in List I with respect to the development of certain industries under the control of the Union.

30. Adulteration of foodstuffs and other goods.

31. Weights and measures except establishment of standards.

32. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

33. Relief of the poor, unemployment.

34. The incorporation, regulation, and winding up of corporations not being corporations specified in List I, or universities ; unincorporated trading, literary, scientific, religious and other societies and associations ; cooperative societies.

35. Charities and charitable institutions, charitable and religious endowments and religious institutions.

36. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

37. Betting and gambling.

38. Omitted.

39. Omitted.

40. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.

41. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in the territory of India :

(a) alcoholic liquors for human consumption ;

- (b) opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs ;
 but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
42. Taxes on agricultural income.
 43. Taxes on lands and buildings.
 44. Duties in respect of succession to agricultural land.
 45. Estate duty in respect of agricultural land.
 46. Taxes on mineral rights, subject to any limitations imposed by Parliament by law relating to mineral development.
 47. Capitation taxes.
 48. Taxes on professions, trades, callings and employments.
 49. Taxes on animals and boats.
 50. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the State of goods liable to taxes within the State on sale, turnover or purchase, taxes on advertisement.
 51. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including tramcars.
 52. Taxes on the consumption or sale of electricity.
 53. Taxes on the entry of goods into a local area for consumption, use or sale therein.
 54. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.
 55. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
 56. Taxes on passengers and goods carried on inland waterways.
 57. Tolls.
 - 57-A. Inquiries and statistics for the purpose of any of the matters in this List.
 - 57-B. Offences against laws with respect to any of the matters in this List.
 58. Fees in respect of any of the matters in this List but not including fees taken in any court.

LIST III—CONCURRENT LIST

1. Criminal law, including all matters included in the Indian Penal Code at the date of commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of the naval, military and air forces in aid of the civil power.
2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.
3. Removal of prisoners and accused persons from one State to another State.
4. Civil Procedure, including the Law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Constitution ; the recovery in a State for the time being specified in Part I or Part II of the First Schedule of claims in respect of taxes and other public demands including arrears of land revenue and sums recoverable as such, arising outside that State.
5. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings.
6. Marriage and divorce ; infants and minors ; adoption.
7. Wills, intestacy, and succession.
8. Transfer of property other than agricultural land and registration of deeds and documents.

9. Trusts and Trustees.
10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency.
13. Administrators-general and official trustees.
14. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
15. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List II.
16. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
17. Legal, medical and other professions.
18. Newspapers, books and printing presses.
19. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
20. Poisons and dangerous drugs.
21. Mechanically propelled vehicles.
22. Boilers.
23. Prevention of cruelty to animals.
24. Vagrancy, nomadic and migratory tribes.
25. Factories.
26. Welfare of labour, conditions of labour, provident funds, employers' liability and workmen's compensation; health insurance, including invalidity pensions, old age pensions.
27. Unemployment and social insurance.
28. Trade Unions; industrial and labour disputes.
29. The prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.
30. Electricity.
31. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with respect to national waterways.
32. The sanctioning of cinematograph films for exhibition.
33. Persons subjected to preventive detention under the authority of the Union.
34. Economic and social planning.
- 34-A. Regulation of the principles on which compensation is to be paid for property acquired or requisitioned for the purposes of the Union or a State.
35. Inquiries and statistics for the purpose of any of the matters in this List.
36. Fees in respect of any of the matters in this List, but not including fees taken in any court.

February 13, 1948

Present: (1) Dr. B. R. Ambedkar, (*In the chair*); (2) Shri Alladi Krishnaswami Ayyar; (3) Maulavi Saiyid Muhammad Saadulla.

In attendance: (1) Shri B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

1. The committee resumed consideration of the schedules.

Seventh Schedule : The committee considered a letter from the Government of Madras to the Ministry of Law proposing that certain villages should be excluded from the East Godavari Agency which is now a partially excluded area and which has been shown in Part I of the table appended to paragraph 18 of the Seventh Schedule as a scheduled area in Madras. It was decided that a new sub-paragraph (2) as shown in the Appendix to these minutes should be added to paragraph 18 of the said schedule on the lines of section 91 (2) of the Government of India Act, 1935 as originally enacted giving power to the President to exclude any area from the scheduled areas mentioned in the table appended to, paragraph 18.

Eighth Schedule : It was decided that in sub-paragraph (2) of paragraph 1 of this schedule the words 'on representation made in that behalf by such tribes' should be omitted.

It was also decided that in clause (c) of sub-paragraph (7) of paragraph 2, for the words 'entitling persons to vote' the words 'for voting' should be substituted.

It was further decided that sub-paragraphs (2) and (1) of paragraph 4 should be renumbered as sub-paragraphs (1) and (2) respectively.

The committee also decided that necessary formal amendments should be made in the Seventh and Eighth Schedules to bring them into line with the other parts of the Constitution as revised.

Tenth Schedule : The committee made no changes in this schedule, but it was decided that necessary formal amendments should be made in this schedule also to bring it into line with the other parts of the Constitution as revised.

Eleventh Schedule : It was decided that this schedule should be omitted and a definition of the expression "Scheduled Castes" should be inserted in the Interpretation Clause and that the said expression should have the same meaning as in the Government of India (Scheduled Castes) Order, 1936.

Twelfth and Thirteenth Schedules : It was decided that these two schedules should be omitted.

2. *Clause 231* : This clause was revised as shown in the Appendix to these minutes.

APPENDIX

SEVENTH SCHEDULE

Part V—Scheduled Areas

18. (1) The areas specified in Parts I to VII of the table below shall be the scheduled areas within the meaning of this Constitution, and any reference in the said table to any division, district, administrative area, tahsil or estate shall be construed as a reference to that division, district, area, tahsil or estate as existing on the date of commencement of this Constitution.

(2) The President may at any time by order—

- (a) direct that the whole or any specified part of a scheduled area shall cease to be a scheduled area or a part of such an area;
- (b) alter, but only by way of rectification of boundaries, any scheduled area;
- (c) on any alteration of the boundaries of a State for the time being specified in Part I of the First Schedule or on the inclusion in Part I of that Schedule of a new State admitted into the Union or established by Parliament, by law, declare any territory not previously included in any State so specified to be, or to form part of, a scheduled area,

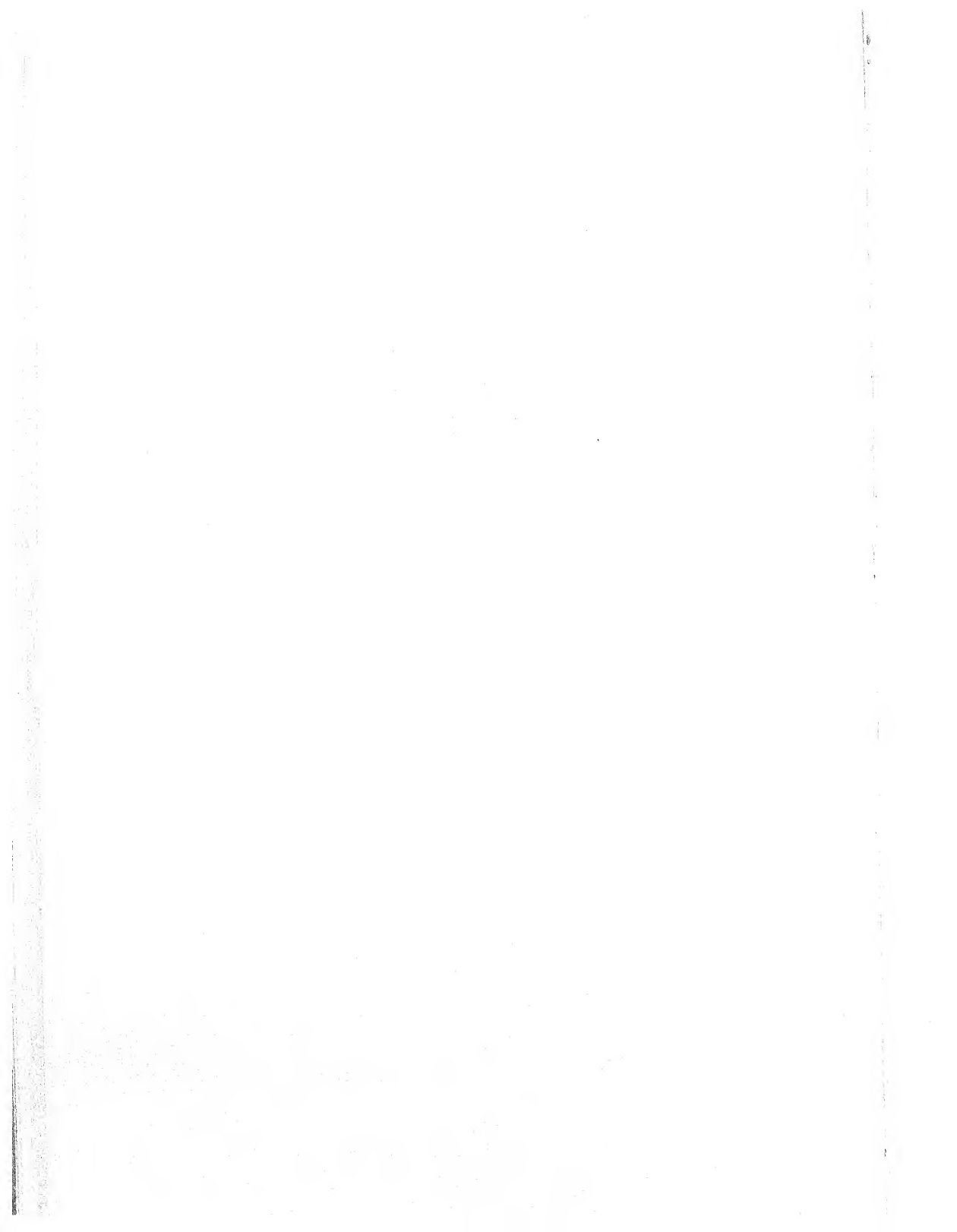
and any such order may contain such incidental and consequential provisions as may appear to the President to be necessary and proper.

231. (1) In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

- (a) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;
- (b) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;
- (c) "an Indian Christian" means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian;
- (d) "borrow" includes the raising of money by the grant of annuities and "loan" shall be construed accordingly;
- (e) "Chief Justice" includes in relation to a High Court a Chief Judge;
- (f) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled:
 - (i) that it is not chargeable in respect of agricultural income;
 - (ii) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorized to be made from dividends payable by the companies to individuals;
 - (iii) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;
- (g) "corresponding Province" or "corresponding State" means in cases of doubt such Province or State as may be determined by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question;
- (h) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly;
- (i) "existing law" means any law, ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any Legislature, authority or person having power to make such a law, ordinance, order, bye-law, rule or regulation but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act;
- (j) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935;
- (k) "goods" includes all materials, commodities, and articles;

- (l) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount ;
 - (m) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund ;
 - (n) "public notification" means a notification in the Gazette of India, or as the case may be, the Official Gazette of a State ;
 - (o) "securities" includes stock ;
 - (p) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly ;
 - (q) "tax on income" includes a tax in the nature of an excess profits tax ;
 - (r) "railway" includes a tramway not wholly within a municipal area ;
 - (s) "Union railway" does not include an Indian State railway but, save as aforesaid includes any railway not being a minor railway ;
 - (t) "Indian State railway" means a railway owned by a State for the time being specified in Part III of the First Schedule and either operated by such State, or operated on behalf of such State otherwise than in accordance with a contract made with that State by or on behalf of the Government of India, or any company operating a Union railway ;
 - (u) "minor railway" means a railway which is wholly situate in one State and does not form a continuous line of communication with a Union railway, whether of the same gauge or not ;
 - (v) "schedule" means a schedule to this Constitution ;
 - (w) "Scheduled Castes" means in relation to any State for the time being specified in Part I of the First Schedule such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936, to be Scheduled Castes for the purposes of the Fifth and Sixth Schedules of the Government of India Act, 1935 in relation to the corresponding Province ;
 - (x) "Scheduled Tribes" means the tribes or communities specified in Parts I to IX of the Eighth Schedule in relation to the States for the time being specified in Part I of the First Schedule to which those Parts respectively relate ;
- (2) Unless the context otherwise requires the General Clauses Act, 1897 (X of 1897) shall apply for the interpretation of this Constitution.
- (3) Any reference in this Constitution to Acts or laws of, or made by, Parliament or Acts or laws of, or made by, the Legislature of a State for the time being specified in Part I of the First Schedule shall be construed as including a reference to an ordinance made by the President or, as the case may be, to an ordinance made by a Governor.

PART FIVE
DRAFT CONSTITUTION
February 1948



DRAFT CONSTITUTION PREPARED BY THE
DRAFTING COMMITTEE

February 21, 1948

[After a detailed scrutiny of the Constitutional Adviser's draft of the Constitution and other material,—notes, reports and memoranda—placed before it, the Drafting Committee submitted to the President of the Constituent Assembly a revised Draft Constitution on February 21, 1948. The draft contained 315 articles and 8 schedules. The full text of this Draft Constitution together with Ambedkar's letter submitting it to the President of the Assembly, is reproduced below.]

New Delhi, 21st February, 1948.

To

The Hon'ble the President of the
Constituent Assembly of India,
New Delhi.

DEAR SIR,

Introductory: On behalf of the Drafting Committee appointed by the resolution of the Constituent Assembly of August 29, 1947, I submit herewith the Draft of the new Constitution of India as settled by the committee.

Although I have been authorized to sign the Draft on behalf of the members of the committee, I should make it clear that not all the members were present at all the meetings of the committee. But at every meeting at which any decision was taken the necessary quorum was present and the decisions were either unanimous or by a majority of those present.

In preparing the Draft the Drafting Committee was of course expected to follow the decisions taken by the Constituent Assembly or by the various committees appointed by the Constituent Assembly. This the Drafting Committee has endeavoured to do as far as possible. There were however some matters in respect of which the Drafting

Committee felt it necessary to suggest certain changes. All such changes have been indicated in the Draft by underlining or side-lining the relevant portions. Care has also been taken by the Drafting Committee to insert a footnote explaining the reasons for every such change. I however think that, having regard to the importance of the matter, I should draw your attention and the attention of the Constituent Assembly to the most important of these changes.

2. *Preamble*: The Objectives Resolution adopted by the Constituent Assembly in January, 1947, declares that India is to be a Sovereign Independent Republic. The Drafting Committee has adopted the phrase "Sovereign Democratic Republic" because independence is usually implied in the word "Sovereign", so that there is hardly anything to be gained by adding the word "Independent". The question of the relationship between the Democratic Republic and the British Commonwealth of Nations remains to be decided subsequently.

The committee has added a clause about fraternity in the preamble, although it does not occur in the Objectives Resolution. The committee felt that the need for fraternal concord and goodwill in India was never greater than now and that this particular aim of the new Constitution should be emphasised by special mention in the preamble.

In other respects the committee has tried to embody in the preamble the spirit and, as far as possible, the language of the Objectives Resolution.

Article 1.

3. *Description of India*: In article 1 of the Draft, India has been described as a Union of States. For uniformity the committee has thought it desirable to describe the units of the Union in the new Constitution as States, whether they are known at present as Governors' Provinces, or Chief Commissioners' Provinces, or Indian States. Some difference between the units there will undoubtedly remain even in the new Constitution; and in order to mark this difference, the committee has divided the States into three classes: those enumerated in Part I of the First Schedule, those enumerated in Part II, and those enumerated in Part III. These correspond respectively to the existing Governors' Provinces, Chief Commissioners' Provinces and Indian States.

It will be noticed that the committee has used the term 'Union' instead of 'Federation'. Nothing much turns on the name, but the committee has preferred to follow the

language of the preamble to the British North America Act, 1867, and considered that there are advantages in describing India as a Union although its Constitution may be federal in structure.

4. *Citizenship* : The committee has given anxious and prolonged consideration to the question of citizenship of the Union. The committee has thought it necessary that, in order to be a citizen of the Union at its inception, a person must have some kind of territorial connection with the Union whether by birth, or descent, or domicile. The committee doubts whether it will be wise to admit as citizens those who, without any such connection with the territory of India, may be prepared to swear allegiance to the Union; for if other States were to copy such a provision, we might have within the Union a large number of persons who, though born and permanently resident therein, would owe allegiance to a foreign state. The committee has, however, kept in view the requirements of the large number of displaced persons who have had to migrate to India within recent months, and has provided for them a specially easy mode of acquiring domicile and, thereby, citizenship. What they have to do (assuming that they or either of their parents or any of their grand-parents were born in India or Pakistan) is—

Articles 5 & 6.

- (a) to declare before a District Magistrate in India that they desire to acquire a domicile in India, and
- (b) to reside in India for at least a month before the declaration.

5. *Fundamental Rights* : The committee has attempted to make these rights and the limitations to which they must necessarily be subject as definite as possible, since the courts may have to pronounce upon them.

Articles 7 to 27.

6. *Powers of the President of the Union* : The committee has considered it desirable to provide that the President should have power to suspend, remit or commute death sentences passed in an Indian State, as in other units, without prejudice to the powers of the Ruler.

Article 59.

It will be remembered that the new Constitution empowers the Governor, in certain circumstances, to issue a proclamation suspending certain provisions of the Constitution; he can do so only for a period of two weeks and is required to report the matter to the President. The committee has provided that upon receipt of the report the President may either revoke the proclamation or issue a

Article 278.

fresh proclamation of his own, the effect of which will be to put the Central Executive in the place of the State Executive and the Central Legislature in the place of the State Legislature. In fact, the State concerned will become a centrally administered area for the duration of the proclamation. This replaces the "Section 93 regime" under the Act of 1935.

Article 60.

7. Executive Power in respect of Concurrent List subjects: Under the present Constitution, executive authority in respect of a Concurrent List subject vests in the Province subject in certain matters to the power of the Centre to give directions as to how the executive authority shall be exercised, *vide* Parts I & II of the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935. In the Draft Constitution the committee has departed slightly from this plan and has provided that the executive power shall vest in the Province (now called the State) "save as expressly provided in this Constitution or by any law made by Parliament." The effect of this saving clause is that it will be open to the Union Parliament under the new Constitution to confer executive power on Union authorities, or, if necessary, to empower Union authorities to give directions as to how executive power shall be exercised by State authorities. In making this provision the committee has kept in view the principle that executive authority should for the most part be co-extensive with legislative power.

Article 67.

8. Composition of the Council of States: According to a decision taken by the Constituent Assembly, the Council of States was to contain not more than 25 members (out of a total not exceeding 250) to be elected from panels or constituencies on a functional basis. The panel system having hitherto proved unsatisfactory in the country from which it was copied (Ireland), the committee has thought it best to provide for 15 members to be nominated by the President for their special knowledge or practical experience in literature, art, science, etc. The committee considers that no special representation for labour or commerce and industry among these nominations is necessary, in view of the fact that they are certain to be adequately represented in the elected element of the Union Parliament owing to adult suffrage.

Articles 68 and 151.

9. Duration of Union Parliament and of State Legislatures: The committee considers that under the Parliamentary

system, particularly at the beginning of a new Constitution on the basis of adult suffrage, a longer term than four years is desirable. New ministers require some time to acquaint themselves with the details of administration, and their last year of office is usually taken up in preparing for the next general election. With a four-year term they will not have enough time for any kind of planned administration.

10. *Supreme Court and High Courts*: Following the practice prevailing in the United Kingdom and the United States of America, the committee has proposed that in certain circumstances retired judges may be invited to serve in particular cases both in the Supreme Court and in the High Courts.

Articles 107 and 200.

11. *Mode of selection of Governors*: Some members of the committee feel that the co-existence of a Governor elected by the people and a Chief Minister responsible to the Legislature might lead to friction. The committee has therefore suggested an alternative mode of appointing Governors: the Legislature should elect a panel of four persons (who need not be residents of the State) and the President of the Union should appoint one of the four as Governor.

Article 131.

12. *Deputy Governors*: The committee has not thought it necessary to make any provision for Deputy Governors, because a Deputy Governor will have no function to perform so long as the Governor is there. At the Centre, the position is different, because the Vice-President is also the *ex-officio* Chairman of the Council of States; but in most of the States there will be no Upper House and it will not be possible to give the Deputy Governor functions similar to those of the Vice-President. There is a provision in the Draft enabling the Legislature of the State (or the President) to make necessary arrangements for the discharge of the functions of the Governor in any unforeseen contingency.

Article 138.

13. *Centrally administered areas*: In accordance with a resolution of the Constituent Assembly, you as the President, appointed a committee of seven members for the purpose of recommending constitutional changes in the centrally administered areas namely, Delhi, Ajmer-Merwara, Coorg, Panth Piploda and the Andaman and Nicobar Islands. The committee submitted its report on October 21,

Articles 212 to 214.

1947. The committee's recommendations were briefly these :

- (1) Each of the provinces of Delhi, Ajmer-Merwara and Coorg should have a Lieutenant-Governor appointed by the President of India.
- (2) Each of these provinces should normally be administered by a Council of Ministers responsible to the Legislature.
- (3) Each of these provinces should have an elected Legislature.

As regards Panth Piploda the committee recommended that it should be added to Ajmer-Merwara and as regards the Andaman and Nicobar Islands the committee recommended that they should continue to be administered by the Government of India as at present, with such adjustments as might be deemed necessary: in other words, these Islands were to continue as a Chief Commissioner's Province. The member representing Ajmer-Merwara and the member representing Coorg on this committee appended a note to the committee's report, in which they said that the special problems arising out of the smallness, geographical position and scantiness of resources of these areas might at no distant future necessitate the joining of each of these areas to a contiguous unit. They therefore urged that there should be a specific provision in the Constitution to make this possible after ascertaining the wishes of the people concerned.

So far as Delhi is concerned, it seems to the committee that as the capital of India it can hardly be placed under a local administration. In the United States, Congress exercises exclusive legislative power in respect of the seat of the Government; so too in Australia. The Drafting Committee has, therefore, come to the conclusion that a more comprehensive plan than that recommended by the *ad hoc* committee is desirable. Accordingly, the Drafting Committee has proposed that these central areas may be administered by the Government of India either through a Chief Commissioner or a Lieutenant-Governor or through the Governor or the Ruler of a neighbouring State. What is to be done in the case of a particular area is left to the President to prescribe by order; he will, of course, in this, as in other matters, act on the advice of responsible ministers. He may, if so advised, have a Lieutenant-Governor in Delhi; he may, again, if so advised, administer Coorg

either through the Governor of Madras or through the Ruler of Mysore after ascertaining the wishes of the people of Coorg. He may also by order create a local Legislature or a Council of Advisers with such constitution, powers and functions, in each case, as may be specified in the order. This seems to the Drafting Committee to be a flexible plan which can be adjusted to the diverse requirements of the areas concerned.

The committee has also provided that Indian States (such as those of the Orissa group) which have ceded full and exclusive authority, jurisdiction and powers to the Central Government may be administered exactly as if they were Centrally Administered Areas, *i.e.*, through a Chief Commissioner, or Lieutenant-Governor, or through the Governor or the Ruler of a neighbouring State, according to the requirements of each case.

14. *Distribution of Legislative Powers* : For the most part, the Drafting Committee has made no change in the Legislative Lists as recommended by the Union Powers Committee and adopted by the Constituent Assembly, but I would draw attention to three matters in respect of which the Drafting Committee has made changes :

*Articles 216 to
232.*

- (a) The committee has provided in effect that when a subject, which is normally in the State List, assumes national importance, then the Union Parliament may legislate upon it. To prevent any unwarranted encroachment upon State powers, it has been provided in the Draft that this can be done only if the Council of States, which may be said to represent the States as units, passes a resolution to that effect by a two-thirds majority.
- (b) The committee has considered it desirable to put into the Concurrent List the whole subject of succession, instead of only succession to property other than agricultural land. Similarly, the committee has put into the Concurrent List all the matters in respect of which parties are now governed by their personal law. This will facilitate the enactment of a uniform law for India in these matters.
- (c) While putting land acquisition for the purposes of the Union into the Union List and land acquisition for the purposes of a State into the State List, the committee has provided that the principles on which compensation for acquisition is to be determined

shall in all cases be in the Concurrent List, in order that there may be some uniformity in this matter.

In addition, in view of the present abnormal circumstances which require Central control over essential supplies, the committee has provided that for a term of five years from the commencement of the Constitution, trade and commerce in, and the production, supply and distribution of, certain essential commodities as also the relief and rehabilitation of displaced persons shall be on the same footing as Concurrent List subjects. In adopting this course, the committee has followed the provisions of the India (Central Government and Legislature) Act, 1946.

Articles 247 to
269.

15. *Financial provisions*: Broadly speaking, the Drafting Committee has incorporated in the Draft the recommendations of the Expert Finance Committee, except those relating to the distribution of revenues between the Centre and the States. In view of the unstable conditions which at present prevail in this field, the Drafting Committee has thought it best to retain the *status quo* in the matter of distribution of revenues for a period of five years, at the end of which a Finance Commission may review the situation.

Articles 281 to
283.

16. *Services*: The committee has refrained from inserting in the Constitution any detailed provisions relating to the Services; the committee considers that they should be regulated by Acts of the appropriate Legislature rather than by constitutional provisions, as the committee feels that the future legislatures in this country, as in other countries, may be trusted to deal fairly with the Services.

Articles 289 to
291.

17. *Elections, Franchise, etc.*: The committee has not thought it necessary to incorporate in the Constitution electoral details including the delimitation of constituencies. These have been left to be provided by auxiliary legislation.

Article 304.

18. *Amendment of the Constitution*: The committee has inserted a provision giving a limited constituent power to the State Legislatures in respect of certain defined matters.

Articles 292,
294 and 305.

19. *Safeguards for Minorities*: The Draft embodies the decisions of the Constituent Assembly and of the Advisory Committee in respect of the reservation of seats in the Legislatures and of posts in the public services. Although these provisions do not extend to the Indian States, nevertheless, in the larger interests of India, the Indian States should

adopt similar provisions for the minorities therein. The Drafting Committee has specially asked me to draw your attention to the importance of this matter.

20. *Linguistic Provinces*: I would invite special attention to Part I of the First Schedule and the footnote thereto. If Andhra or any other linguistic region is to be mentioned in this Schedule before the Constitution is finally adopted, steps will have to be taken immediately to make them into separate Governors' Provinces under section 290 of the Government of India Act, 1935, before the Draft Constitution is finally passed. Of course, the new Constitution itself contains provisions for the creation of new States, but this will be after the new Constitution comes into operation.

First Schedule.

21. *Scheduled Tribes, Scheduled Areas and Tribal Areas*: The committee has embodied in the schedules to the Constitution the recommendations of the sub-committees on these subjects.

Fifth and Sixth Schedules.

22. A separate note recorded by Shri Alladi Krishnaswami Ayyar on certain points (not involving any question of principle) is appended to the Draft at his request.

23. I cannot transmit to you this Draft Constitution without placing on record the committee's gratitude for the assistance the committee has received in this difficult task from Sir B. N. Rau, the Constitutional Adviser, Shri S. N. Mukerjee, Joint Secretary and Draftsman, and the staff of the Constituent Assembly Secretariat.

Yours truly,

B. R. AMBEDKAR.

DRAFT CONSTITUTION OF INDIA

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC* and to secure to all its citizens:

Preamble.

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

*This follows the decision taken by the Constituent Assembly. The question of the relationship between this Democratic Republic and the British Commonwealth of Nations remains to be decided subsequently.

EQUALITY of status and of opportunity and to promote among them all;

FRATERNITY assuring the dignity of the individual and the unity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this _____
of _____ (_____ day
of May, 1948 A.D.), do HEREBY ADOPT, ENACT AND
GIVE TO OURSELVES THIS CONSTITUTION.

PART I

THE UNION AND ITS TERRITORY AND JURISDICTION

Name and territory of the Union.

*1. (1) India shall be a Union of States.

(2) The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule.

(3) The territory of India shall comprise—

(a) the territories of the States;

(b) the territories for the time being specified in Part IV of the First Schedule; and

(c) such other territories as may be acquired.

Admission and establishment of new States.

2. Parliament may, from time to time, by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Formation of new States and alteration of areas, boundaries or names of existing States.

3. Parliament may by law—

(a) form a new State by separation of territory from a State or by uniting two or more States or parts of States;

(b) increase the area of any State;

(c) diminish the area of any State;

(d) alter the boundaries of any State;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except by the Government of India and unless—

(a) either—

(i) a representation in that behalf has been made to the President by a majority of the representatives of the territory in the Legislature of the State

*The committee considers that, following the language of the preamble to the British North America Act, 1867, it would not be inappropriate to describe India as a Union although its Constitution may be federal in structure.

from which the territory is to be separated or excluded; or

- (ii) a resolution in that behalf has been passed by the Legislature of any State whose boundaries or name will be affected by the proposal to be contained in the Bill; and
- (b) where the proposal contained in the Bill affects the boundaries or name of any State, other than a State for the time being specified in Part III of the First Schedule, *the views of the Legislature of the State both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and where such proposal affects the boundaries or name of any State for the time being specified in Part III of the First Schedule, the previous consent of the State to the proposal has been obtained.

4. (1) Any law referred to in article 2 or article 3 of this Constitution shall contain such provisions for the amendment of the First Schedule as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

Law made under articles 2 and 3 to provide for the amendment of the First Schedule and incidental and consequential matters.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 304.

PART II

CITIZENSHIP

5. At the date of commencement of this Constitution—

- (a) every person who or either of whose parents or any of whose grand-parents was born in the territory of India as defined in this Constitution and who has not made his permanent abode in any foreign State after the first day of April, 1947; and
- (b) every person who or either of whose parents or any of whose grand-parents was born in India as

Citizenship at the date of commencement of the Constitution.

*The committee is of opinion that in the case of any State other than a State specified in Part III of the First Schedule, the previous consent of the State is not necessary and it would be enough if the views of the Legislature of the State were obtained by the President.

defined in the Government of India Act, 1935 (as originally enacted), or in Burma, Ceylon or Malaya, and who has his domicile in the territory of India as defined in this Constitution,

shall be a citizen of India, provided that he has not acquired the citizenship of any foreign State before the date of commencement of this Constitution.

Explanation: For the purposes of clause (b) of this article, a person shall be deemed to have his domicile in the territory of India—

(i) if he would have had his domicile in such territory under Part II of the Indian Succession Act, 1925, had the provisions of that Part been applicable to him, or

*(ii) if he has, before the date of commencement of this Constitution, deposited in the office of the District Magistrate a declaration in writing of his desire to acquire such domicile and has resided in the territory of India for at least one month before the date of the declaration.

6. Parliament may, by law, make further provision regarding the acquisition and termination of citizenship and all other matters relating thereto.

Parliament to regulate the right of citizenship by law.

PART III

FUNDAMENTAL RIGHTS

General

Definition.

7. In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India.

Savings.

8. (1) All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

*The committee is of opinion that auxiliary action whether by legislation or otherwise may have to be taken before the commencement of this Constitution for the receipt of declarations, keeping of registers of such declarations and other incidental matters for the purpose of clause (ii) of the Explanation.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void:

*Provided that nothing in this clause shall prevent the State from making any law for the removal of any inequality, disparity, disadvantage or discrimination arising out of any existing law.

(3) In this article, the expression "law" includes any ordinance, order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof.

Rights of Equality

9. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.

Prohibition of discrimination on grounds of religion, race, caste or sex.

In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

- (a) access to shops, public restaurants, hotels and places of public entertainment, or
- (b) the use of wells, tanks, roads and places of public resort maintained wholly or partly out of the revenues of the State or dedicated to the use of the general public.

(2) Nothing in this article shall prevent the State from making any special provision for women and children.

10. (1) There shall be equality of opportunity for all citizens in matters of employment under the State.

Equality of opportunity in matters of public employment.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office under the State.

(3) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.

*The proviso has been added in order to enable the State to make laws removing any existing discrimination. Such laws will necessarily be discriminatory in a sense, because they will operate only against those who hitherto enjoyed an undue advantage. It is obvious that laws of this character should not be prohibited.

†The committee is of opinion that before the words "class of citizens" the word "backward" should be inserted.

(4) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs or any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

*Abolition of
Untouchability.*

11. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

*Abolition of
titles.*

12. (1) No title shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State.

*Protection of
certain rights
regarding free-
dom of
speech, etc.*

13. (1) Subject to the other provisions of this article, all citizens shall have the right—

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India;
- (f) to acquire, hold and dispose of property; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State.

(3) Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of the general public, restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or *for the protection of the interests of any aboriginal tribe.

(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order, morality or health, restrictions on the exercise of the right conferred by the said sub-clause and in particular prescribing, or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business.

14. (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence.

Protection in respect of conviction of offences.

(2) No person shall be punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

****15.** No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the law within the territory of India.

Protection of life and personal liberty and equality before law.

*The committee is of opinion that no protection to any minority group is necessary in this article.

**The committee is of opinion that the word "liberty" should be qualified by the insertion of the word "personal" before it, for otherwise it might be construed very widely so as to include even the freedoms already dealt with in article 13.

The committee has also substituted the expression "except according to procedure established by law" for the words "without due process of law" as the former is more specific (c.f. Art. XXXI of the Japanese Constitution, 1946). The corresponding provision in the Irish Constitution runs: "No citizen shall be deprived of his personal liberty save in accordance with law".

The committee is also of opinion that the words "or the equal protection of the laws" should be inserted after the words "equality before the law" as in section 1 of Article XIV of the U.S.A. Constitution (1865).

Freedom of trade, commerce and intercourse throughout the territory of India.

Prohibition of traffic in human beings and enforced labour.

Prohibition of employment of children in factories, etc.

Freedom of conscience and free profession, practice and propagation of religion.

Freedom to manage religious affairs and to own, acquire and administer properties for religious or charitable purposes.

*16. Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free.

17. (1) Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes. In imposing such service the State shall not make any discrimination on the ground of race, religion, caste or class.

18. No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Rights relating to Religion

19. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Explanation: The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

(2) Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

20. Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

*The committee has omitted the words "by and between the citizens" which occurred after the words "trade, commerce and intercourse" in the provision as adopted by the Constituent Assembly. The qualifying words might necessitate elaborate inquiries at State frontiers as to the nationality of the consignor and consignee.

(c) to own and acquire movable and immovable property ; and

(d) to administer such property in accordance with law.

21. No person may be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Freedom as to payment of taxes for promotion and maintenance of any particular religion or religious denomination. Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

*22. (1) No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds:

Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(2) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person, or if such person is a minor, his guardian has given his consent thereto.

(3) Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours.

Cultural and Educational Rights

23. (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same.

Protection of interests of minorities.

(2) No minority whether based on religion, community or language shall be discriminated against in regard to the admission of any person belonging to such minority into any educational institution maintained by the State.

(3) (a) All minorities whether based on religion, community or language shall have the right to establish and administer educational institutions of their choice.

*This article follows the recommendation of the *ad hoc* committee.

(b) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion, community or language.

Right to Property

Compulsory acquisition of property.

24. (1) No person shall be deprived of his property save by authority of law.

(2) No property, movable or immovable, including any interest in, or in any company owning, any commercial or industrial undertaking, shall be taken possession of or amount of the compensation, or specifies the principles on taking of such possession or such acquisition, unless the law provides for the payment of compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined.

(3) Nothing in clause (2) of this article shall affect---

(a) the provisions of any existing law, or

(b) the provisions of any law which the State may hereafter make for the purpose of imposing or levying any tax or for the promotion of public health or the prevention of danger to life or property.

Right to Constitutional Remedies

Remedies for enforcement of rights conferred by this Part.

25. (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.

(4) The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

Power to Parliament to modify the rights guaranteed in this Part in their

26. Parliament may by law determine to what extent any of the rights guaranteed in this Part shall in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order be restricted

or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

27. Notwithstanding anything elsewhere contained in this Constitution, Parliament shall have, and the Legislature of a State for the time being specified in Part I or Part III of the First Schedule shall not have, power to make laws—

(a) with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament; and

(b) for prescribing punishment for those acts which are declared to be offences under this Part;

and Parliament shall, as soon as may be after the commencement of this Constitution, make laws to provide for such matters and for prescribing punishment for such acts:

Provided that any law in force in the territory of India or in any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act which is declared to be an offence under this Part shall continue in force therein until altered or repealed or amended by Parliament or other competent authority.

application to Forces.

Legislation to give effect to the provisions of this Part.

PART IV

DIRECTIVE PRINCIPLES OF STATE POLICY

28. In this Part, unless the context otherwise requires, "the State" has the same meaning as in Part III of this Constitution.

29. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

30. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

31. The State shall, in particular, direct its policy towards securing—

(i) that the citizens, men and women equally, have the right to an adequate means of livelihood;

Definition.

Application of the principles set forth in this Part.

State to secure a social order for the promotion and welfare of the people.

Certain principles of policy to be followed by the State.

- (ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (iii) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (iv) that there is equal pay for equal work for both men and women;
- (v) that the strength and health of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

Right to work, to education and to public assistance in certain cases.

Provision for just and humane conditions of work and maternity relief.

Living wage, etc., for workers.

Uniform civil code for the citizens.

Provision for free primary education.

Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

32. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness, disablement, and other cases of undeserved want.

33. The State shall make provision for securing just and humane conditions of work and for maternity relief.

34. The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

35. The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

36. Every citizen is entitled to free primary education and the State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

37. The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

38. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

39. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to law made by Parliament all such monuments or places or objects.

Protection, preservation and maintenance of monuments and places and objects of national importance.

40. The State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and respect for treaty obligations in the dealings of organized people with one another.

Promotion of international peace and security.

PART V

THE UNION

Chapter I—The Executive

The President and Vice-President

41. There shall be a President of India.

The President of India. Executive Power of the Union.

42. (1) The executive power of the Union shall be vested in the President and may be exercised by him in accordance with the Constitution and the law.

(2) Without prejudice to the generality of the foregoing provision, the supreme command of the Defence Forces of India shall be vested in the President and the exercise thereof shall be regulated by law.

(3) Nothing in this article shall—

(a) be deemed to transfer to the President any functions conferred by any existing law on the Government of any State or other authority; or

(b) prevent Parliament from conferring by law functions on authorities other than the President.

43. The President shall be elected by the members of an electoral college consisting of—

Election of President.

(a) the members of both Houses of Parliament, and

*Manner of
election of
President.*

(b) the elected members of the Legislatures of the States.

44. (1) As far as practicable, there shall be uniformity in the scale of representation of the different States at the election of the President.

*(2) For the purpose of securing such uniformity the number of votes which each elected member of Parliament and of the Legislature of each State is entitled to cast at such election shall be determined in the following manner :

(a) every elected member of the Legislature of a State

*The method of calculation set out in clause (2) of article 44 may be illustrated as follows:

Illustrations to sub-clauses (a) and (b) of clause (2)-

(i) The population of Bombay is 20,849,840. Let us take the total number of elected members in the Legislative Assembly of Bombay to be 208 (*i.e.*, one member representing one lakh of the population). To obtain the number of votes which each such elected member will be entitled to cast at the election of the President, we have first to divide 20,849,840 (which is the population) by 208 (which is the total number of elected members), and then to divide the quotient by 1,000. In this case, the quotient is 100239. The number of votes which each such member will be entitled to cast would be $100,239/1000$ *i.e.*, 100 (disregarding the remainder 239 which is less than five hundred).

(ii) Again, the population of Bikaner is 1,292,938. Let us take the total number of elected members of the Legislature of Bikaner to be 130 (*i.e.*, one member representing roughly ten thousand of the population). Now, applying the aforesaid process, if we divide 1,292,938 (*i.e.*, the population) by 130 (*i.e.*, the total number of elected members), the quotient is 9945. Therefore, the number of votes which each member of the Bikaner Legislature would be entitled to cast is $9945/1000$ that is 10 (counting the remainder 945 which is greater than five hundred as equivalent to 1000).

Illustration under sub-clause (c) of clause (2)-

If the total number of votes assigned to the members of the Legislatures of the States in accordance with the above calculation be 74,940 and the total number of elected members of both the Houses of Parliament be 750, then to obtain the number of votes which each member of either House of Parliament will be entitled to cast at the election of the President, we should have to divide 74,940 by 750. Thus the number of votes which each such member will be entitled to cast in the case would be $\frac{74,940}{750} = 99\frac{23}{25}$, *i.e.*, 100 (the fraction $\frac{23}{25}$ which exceeds one-half being counted as one).

shall have as many votes as there are multiples of one thousand in the quotient obtained by dividing the population of the State by the total number of elected members of the Legislature;

(b) if, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) of this clause shall be further increased by one;

(c) each elected member of either House of Parliament shall have such number of votes as may be obtained by dividing the total number of votes assigned to the members of the Legislatures of the States under sub-clauses (a) and (b) of this clause by the total number of such members, fractions exceeding one-half being counted as one and other fractions being disregarded.

(3) The election of the President shall be held in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Explanation : In this article, the expression "the Legislature of a State" means, where the Legislature is bicameral, the Lower House of the Legislature, and the expression "population" means the population as ascertained at the last preceding census.

45. The President shall hold office for a term of five years from the date on which he enters upon his office:

*Term of office
of President.*

Provided that—

(a) the President may, by resignation under his hand addressed to the Chairman of the Council of States and the Speaker of the House of the People, resign his office;

(b) the President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 50 of this Constitution;

(c) the President shall notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

46. A person who holds, or who has held, office as President shall be eligible for re-election to that office once, but only once.

*Eligibility for
re-election.*

47. (1) No person shall be eligible for election as President unless he—

*Qualifications
for election as
President.*

(a) is a citizen of India,

(b) has completed the age of thirty-five years, and

(c) is qualified for election as a member of the House of the People.

(2) A person shall not be eligible for election as President if he holds any office or position of emolument under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation : For the purposes of this clause a person shall not be deemed to hold any office or position of emolument by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of the Legislature, and if not less than three-fourths of the members of the Legislature or House, as the case may be, are elected.

*Conditions of
President's
office.*

48. (1) The President shall not be a member either of Parliament or of the Legislature of any State, and if a member of Parliament or of the Legislature of any State be elected President, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as President.

(2) The President shall not hold any other office or position of emolument.

(3) The President shall have an official residence and there shall be paid to the President such emoluments and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

(4) The emoluments and allowances of the President shall not be diminished during his term of office.

*Affirmation or
oath by the
President or per-
son acting as, or
discharging the
functions of the
President before
entering office.*

49. Every President and every person acting as President or discharging the functions of the President shall before entering upon his office make and subscribe in the presence of the Chief Justice of India an affirmation or oath in the following form, that is to say—

I, A. B., do solemnly affirm (or swear) that I will faithfully execute the office of President (or discharge the

functions of the President) of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of India.

50. (1) When a President is to be impeached for violation of the Constitution, the charge shall be preferred by either House of Parliament.

Procedure for impeachment of the President.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after a notice in writing signed by not less than thirty members of the House has been given of their intention to move the resolution, and

(b) such resolution has been supported by not less than two-thirds of the total membership of the House.

(3) When a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the House by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

51. (1) An election to fill a vacancy caused by the expiration of the term of office of President shall be completed before the expiration of the term.

Time of holding elections to fill vacancies in the office of President and the term of office of persons elected to fill casual vacancies.

(2) An election to fill a vacancy in the office of President occurring by reason of his death, resignation or removal, or otherwise, shall be held as soon as possible after, and in no case later than six months from, the date of occurrence of the vacancy; and the person elected to fill the vacancy shall be entitled to hold office for the full term of five years as provided in article 45 of this Constitution.

52. There shall be a Vice-President of India.

The Vice-President of India.

53. The Vice-President shall be *ex-officio* Chairman of the Council of States and shall not hold any other office or position of emolument:

The Vice-President to be ex-officio Chairman of the Council of States.

Provided that during any period when the Vice-President

acts as President or discharges the functions of the President under article 54 of this Constitution, he shall not perform the duties of the office of Chairman of the Council of States.

The Vice-President to act as President or to discharge his functions during casual vacancies in the office, or the absence, of the President.

54. (1) In the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or removal, or otherwise, the Vice-President shall act as President until the date on which a new President elected in accordance with the provisions of this Chapter to fill such vacancy enters upon his office.

(2) When the President is unable to discharge his functions owing to absence, illness or any other cause, the Vice-President shall discharge his functions until the date on which the President resumes his duties.

(3) The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of the, President, have all the powers and immunities of the President.

Election of Vice-President.

55. (1) The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and voting at such election shall be by secret ballot.

(2) The Vice-President shall not be a member either of Parliament or of the Legislature of any State, and if a member of Parliament or of the Legislature of any State be elected Vice-President, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as Vice-President.

(3) No person shall be eligible for election as Vice-President unless he—

- (a) is a citizen of India;
- (b) has completed the age of thirty-five years; and
- (c) is qualified for election as a member of the Council of States.

(4) A person shall not be eligible for election as Vice-President if he holds any office or position of emolument under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this clause, a person shall not be deemed to hold any office or position of emolument by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of such Legislature, and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

(5) An election to fill a vacancy caused by the expiration of the term of office of Vice-President shall be completed before the expiration of the term.

(6) An election to fill a vacancy in the office of Vice-President occurring by reason of his death, resignation or removal, or otherwise, shall be held as soon as possible after the occurrence of the vacancy, and the person elected to fill such vacancy shall be entitled to hold office for the full term of five years as provided in article 56 of this Constitution.

56. The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that—

(a) a Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) a Vice-President may be removed from his office for incapacity or want of confidence by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) a Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

57. Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter.

58. (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President

*Term of office
of Vice-President.*

*Power of Parliament to provide
for the discharge
of the functions of the
President in any
other contingency.*

*Matters relating
to or connected
with the election*

*of a President
or Vice-President.*

Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases.

Extent of executive power of the Union.

shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

59. (1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence—

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence under any law relating to a matter with respect to which Parliament has, and the Legislature of the State in which the offence is committed has not, power to make laws;

*(c) in all cases where the sentence is a sentence of death.

(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the power conferred by law on any officer of the Armed Forces of India to suspend, remit or commute a sentence passed by a Court Martial.

(3) Nothing in sub-clause (c) of clause (1) of this article shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor or the Ruler of the State under any law for the time being in force.

60. (1) Subject to the provisions of this Constitution, the executive power of the Union shall extend—

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement:

†Provided that the executive power referred to in sub-clause

(a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament,

*The committee is of opinion that the President should have power to suspend, remit or commute a death sentence passed in any State, without prejudice to the powers of the Governor or Ruler.

†The committee has inserted this proviso on the view that the executive power in respect of Concurrent List subjects should vest primarily in the State concerned except as otherwise provided in the Constitution or in any law made by Parliament.

extend in any State to matters with respect to which the Legislature of the State has also power to make laws.

(2) Until otherwise provided by Parliament, a State and any officer or authority of a State may, notwithstanding anything contained in this article, continue to exercise in matters with respect to which Parliament has power to make laws for that State such executive power or functions as the State or officer or authority thereof could exercise immediately before the commencement of this Constitution.

Council of Ministers

61. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

Council of Ministers to aid and advise President.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.

62. (1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

Other provisions as to Ministers.

(2) The Ministers shall hold office during the pleasure of the President.

(3) The Council shall be collectively responsible to the House of the People.

(4) Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(5) A Minister who, for any period of six consecutive months, is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister.

(6) The salaries and allowances of Ministers shall be such as Parliament may from time to time by law determine and, until Parliament so determines, shall be as specified in the Second Schedule.

The Attorney-General for India

*63. (1) The President shall appoint a person, who is qualified to be appointed a judge of the Supreme Court, to be Attorney-General for India.

Attorney-General for India.

(2) It shall be the duty of the Attorney-General to give

*The committee has substituted the term "Attorney-General for India" for "Advocate-General for India" partly to distinguish him from the Provincial Advocates-General and partly to follow the terminology prevalent in other countries like the U.K. and the U.S.A.

advice to the Government of India upon such legal matters and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties the Attorney-General shall have right of audience in all courts in the territory of India.

(4) The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

Conduct of Government Business

Conduct of business of the Government of India.

64. (1) All executive action of the Government of India shall be expressed to be taken in the name of the President.

(2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

Duties of Prime Minister as respects the furnishing of information to the President, etc.

65. It shall be the duty of the Prime Minister—

- (a) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;
- (b) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and
- (c) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Chapter II—Parliament

General

Constitution of Parliament.

66. There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People.

Composition of Houses of Parliament.

67. (1) The Council of States shall consist of two hundred and fifty members of whom—

- (a) fifteen members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States :

Provided that the total number of representatives of the States for the time being specified in Part III of the First Schedule shall not exceed forty per cent of this remainder.

*(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely,—

- (a) literature, art, science and education;
- (b) agriculture, fisheries and allied subjects;
- (c) engineering and architecture;
- (d) public administration and social services.

(3) The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall—

- (a) where the Legislature of the State has two Houses, be elected by the elected members of the Lower House;
- (b) where the Legislature of the State has only one House, be elected by the elected members of that House; and
- (c) where there is no House of the Legislature for the State, be chosen in such manner as Parliament may by law prescribe.

(4) The representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe.

*The committee is of opinion that not more than fifteen members should be nominated by the President to represent special interests in the Council of States and that no special representation for labour or commerce and industry is necessary in view of adult suffrage. The committee understands that the panel system of election hitherto in force under the Irish Constitution has proved very unsatisfactory in practice. In the absence of any other guidance in this matter the committee has provided for nomination by the President in place of election, while retaining a certain measure of functional representation. Since the committee has had to substitute nomination for election and as the committee thinks that no special representation for labour or commerce and industry is necessary, the committee is of opinion that it would be enough to provide for fifteen nominated members.

(5) (a) Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters.

(b) For the purpose of sub-clause (a), the States of India shall be divided, grouped or formed into territorial constituencies and the number of representatives to be allotted to each such constituency shall be so determined as to ensure that there shall be not less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population:

Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States.

(c) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India.

(6) The election to the House of the People shall be on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such elections.

(7) Parliament may, by law, provide for the representation in the House of the People of territories other than States.

(8) Upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine.

(9) When States for the time being specified in Part III of the First Schedule are grouped together for the purpose of returning representatives to the Council of States, the entire group shall be deemed to be a single State for the purposes of this article.

68. (1) The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

*Duration of
Houses of
Parliament.*

(2) The House of the People, unless sooner dissolved, shall continue for *five years from the date appointed for its first meeting and no longer, and the expiration of the said period of *five years shall operate as the dissolution of the House:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by the President for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

69. (1) The Houses of Parliament shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

*Sessions of
Parliament,
prorogation
and
dissolution.*

(2) Subject to the provisions of this article, the President may from time to time—

(a) summon the Houses or either House of Parliament to meet at such time and place as he thinks fit;

(b) prorogue the Houses;

(c) dissolve the House of the People.

70. (1) The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

*Right of President to address
and send messages to Houses.*

(2) The President may send messages to either House of Parliament, whether with respect to a Bill then pending in Parliament or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

71. (1) At the commencement of every session the President shall address both Houses of Parliament assembled

*Special address
by the President at the*

*The committee has inserted "five years" instead of "four years" as the life of the House of the People as it considers that under the Parliamentary system of government the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

commencement of each session of Parliament and discussion in Parliament of matters referred to in the address.

Right of Ministers and Attorney-General as respects Houses.

The Chairman and Deputy Chairman of the Council of States.

Vacation and resignation of, and removal from, the office of, Deputy Chairman.

Power of the Deputy Chairman or other persons to perform the duties of the office of, or to act as, Chairman.

together and inform Parliament of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

72. Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote.

Officers of Parliament

73. (1) The Vice-President of India shall be *ex-officio* Chairman of the Council of States.

(2) The Council of States shall, as soon as may be, choose a member of the Council to be Deputy Chairman thereof, and so often as the office of Deputy Chairman becomes vacant the Council shall choose another member to be Deputy Chairman thereof.

74. A member holding office as Deputy Chairman of the Council of States—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time, by writing under his hand addressed to the Chairman, resign his office; and

(c) may be removed from his office for incapacity or want of confidence by a resolution of the Council passed by a majority of all the then members of the Council:

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

75. (1) While the office of Chairman is vacant, or during any period when the Vice-President is acting as, or discharging the functions of the, President under article 54 of this Constitution, the duties of the office shall be performed by the Deputy Chairman, or if the office of Deputy Chairman is also vacant, by such member of the Council of States as the President may appoint for the purpose.

(2) During the absence of the Chairman from any sitting of the Council of States, the Deputy Chairman or, if he is

also absent, such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

76. The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker as the case may be.

The Speaker and Deputy Speaker of the House of the People.

77. A member holding office as Speaker or Deputy Speaker of the House of the People—

- (a) shall vacate his office if he ceases to be a member of the House of the People;
- (b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and
- (c) may be removed from his office for incapacity or want of confidence by a resolution of the House of the People passed by a majority of all the then members of the House:

Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker.

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

78. (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the House of the People as the President may appoint for the purpose.

Power of the Deputy Speaker or other persons to perform the duties of the office of, or to act as, Speaker.

(2) During the absence of the Speaker from any sitting of the House of the People, the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the House, or, if no such person is present, such other person as may be determined by the House, shall act as Speaker.

79. There shall be paid to the Chairman and the Deputy Chairman of the Council of States, and to the Speaker and the Deputy Speaker of the House of the People, such salaries

Salaries and allowances of the Chairman and Deputy

Chairman and the Speaker and the Deputy Speaker.

and allowances as may be respectively fixed by Parliament by law, and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Conduct of Business

Voting in Houses; power of Houses to act notwithstanding vacancies and quorum.

80. (1) Save as provided in this Constitution, all questions at any sitting or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Chairman or Speaker or person acting as such.

The Chairman or Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

(2) Either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of a House, less than one-sixth of the total number of members of the House are present, it shall be the duty of the Chairman or Speaker or person acting as such either to adjourn the House, or to suspend the meeting until at least one-sixth of the members are present.

Disqualifications of Members

Declaration by members.

81. Every member of either House of Parliament shall, before taking his seat, make and subscribe before the President, or some person appointed in that behalf by him, a declaration according to the form set out for the purpose in the Third Schedule.

Vacation of seats.

82. (1) No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article; or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be, his seat shall thereupon become vacant.

(3) If for a period of sixty days a member of either House of Parliament is without permission of the House

absent from all meetings thereof, the House may declare his seat vacant:

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

83. (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

Disqualifications for membership.

(a) if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

*(d) if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power; and

(e) if he is so disqualified by or under any law made by Parliament.

(2) For the purposes of this article a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

84. If a person sits or votes as a member of either House of Parliament before he has complied with the requirements of article 81 of this Constitution, or when he knows that he is not qualified, or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits

Penalty for sitting and voting before making declaration under article 81 or when not qualified or when disqualified.

*The committee has inserted this sub-clause, following the provisions of section 44 (i) of the Commonwealth of Australia Constitution Act.

or votes to a penalty of five hundred rupees to be recovered as a debt due to the Government of India.

Privileges and Immunities of Members

*Privileges, etc.
of members.*

85. (1) Subject to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the privileges and immunities of members of the Houses shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of Parliament as they apply in relation to members of Parliament.

*Salaries and
allowances of
members.*

86. Members of either House of Parliament shall be entitled to receive such salaries and allowances as may from time to time be determined by Parliament by law and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the Legislature of the Dominion of India.

Legislative Procedure

*Provisions as
to introduction
and passing of
Bills.*

87. (1) Subject to the provisions of articles 89 and 97 of this Constitution with respect to Money Bills and other financial Bills, a Bill may originate in either House of Parliament.

(2) Subject to the provisions of articles 88 and 89 of this Constitution, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in Parliament shall not lapse by reason of the prorogation of the Houses.

(4) A Bill pending in the Council of States which has not

been passed by the House of the People shall not lapse on a dissolution of the House of the People.

(5) A Bill which is pending in the House of the People or which having been passed by the House of the People is pending in the Council of States shall, subject to the provisions of article 88 of this Constitution, lapse on a dissolution of the House of the People.

88. (1) If after a Bill has been passed by one House and transmitted to the other House—

Joint sitting of both Houses in certain cases.

- (a) the Bill is rejected by the other House; or
- (b) the Houses have finally disagreed as to the amendments to be made in the Bill; or
- (c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it;

the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1) of this article, no account shall be taken of any time during which both Houses are prorogued or adjourned for more than four days.

(3) Where the President has under clause (1) of this article notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly.

(4) If at the joint sitting of the two Houses the Bill with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

- (a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated,

no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

- (b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed;

and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

(5) A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has intervened since the President notified his intention to summon the Houses to meet therein.

Special Procedure in respect of Money Bills.

89. (1) A Money Bill shall not be introduced in the Council of States.

(2) After a Money Bill has been passed by the House of the People it shall be transmitted to the Council of States for its recommendations and the Council of States shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the House of the People with its recommendations and the House of the People may thereupon either accept or reject all or any of the recommendations of the Council of States.

(3) If the House of the People accepts any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Council of States and accepted by the House of the People.

(4) If the House of the People does not accept any of the recommendations of the Council of States, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the House of the People without any of the amendments recommended by the Council of States.

(5) If a Money Bill passed by the House of the People and transmitted to the Council of States for its recommendations is not returned to the House of the People within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the House of the People.

90. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely :

*Definition of
"Money Bills".*

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- (c) supply;
- (d) the appropriation of the revenues of India;
- (e) the declaring of any expenditure to be expenditure charged on the revenues of India or the increasing of the amount of any such expenditure;
- (f) the receipt of money on account of the revenues of India or the custody or issue of such money or the audit of the accounts of the Government of India; or
- (g) any matter incidental to any of the matters specified in items (a) to (f) of this clause.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under the last preceding article, and when it is presented to the President for assent under the next succeeding article, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill.

91. When a Bill has been passed by the Houses of Parliament, it shall be presented to the President, and the President shall declare either that he assents to the Bill or that he withholds assent therefrom:

Assent to Bills.

Provided that the President may, not later than six weeks after the presentation to him of a Bill for assent, return the Bill if it is not a Money Bill to the Houses with a message requesting that they will reconsider the Bill or any

specified provision thereof, and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and the Houses shall reconsider the Bill accordingly.

Procedure in Financial Matters

Annual financial statement.

92. (1) The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the estimated receipts and expenditure of the Government of India for that year, in this Part of this Constitution referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

- (a) the sums required to meet expenditure described by this Constitution as expenditure charged upon the revenues of India; and
- (b) the sums required to meet other expenditure proposed to be made from the revenues of India, and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of India—

- (a) the emoluments and allowances of the President and other expenditure relating to his office;
- (b) the emoluments and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People;
- (c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt;
- (d) (i) the salaries, allowances and pensions payable to or in respect of judges of the Supreme Court;
- (ii) the pensions payable to or in respect of judges of the Federal Court;
- (iii) the pensions payable to or in respect of judges of any High Court which exercises or immediately before the commencement of this Constitution exercised jurisdiction within any area included in the States for the time being specified in Parts I and II of the First Schedule;
- (e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal; and

(f) any other expenditure declared by this Constitution or by Parliament by law to be so charged.

93. (1) So much of the estimates as relates to expenditure charged upon the revenues of India shall not be submitted to the vote of Parliament, but nothing in this clause shall be construed as preventing the discussion in either House of Parliament of any of these estimates.

Procedure in Parliament with respect to estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the House of the People and the House of the People shall have power to assent, or to refuse to assent to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the President.

94. (1) The President shall authenticate by his signature a schedule specifying—

Authentication of schedule of authorised expenditure.

(a) the grants made by the House of the People under the last preceding article;

(b) the several sums required to meet the expenditure charged on the revenues of India, but not exceeding in any case the sums shown in the statement previously laid before Parliament.

(2) The schedule so authenticated shall be laid before the House of the People, but shall not be open to discussion or vote in Parliament.

(3) Subject to the provisions of the next two succeeding articles, no expenditure from the revenues of India shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

95. If in respect of any financial year further expenditure from the revenues of India becomes necessary over and above the expenditure theretofore authorised for that year, the President shall cause to be laid before both the Houses of Parliament a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding articles shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Supplementary statements of expenditure.

*96. If in any financial year expenditure from the

Excess grants.

*This article follows the recommendations of the Expert Committee on the financial provisions of the Constitution.

revenues of India has been incurred on any service for which the vote of the House of the People is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the House of the People and the provisions of articles 93 and 94 of this Constitution shall have effect in relation to such demand as they have effect in relation to a demand for a grant.

Special provisions as to financial Bills.

97. (1) A Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 90 of this Constitution shall not be introduced or moved except on the recommendation of the President and a Bill making such provision shall not be introduced in the Council of States:

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

Procedure Generally

Rules of procedure.

98. (1) Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Legislature of the Dominion of India shall have effect in relation to Parliament subject to such modifications and adaptations as may be made therein by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

(3) The President, after consultation with the Chairman of the Council of States and the Speaker of the House of the People, may make rules as to the procedure with

respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People,* or in his absence such person as may be determined by rules of procedure made under clause (3) of this article, shall preside.

99. (1) In Parliament business shall be transacted in Hindi or English :

Language to be used in Parliament.

Provided that the Chairman of the Council of States or the Speaker of the House of the People, as the case may be, may permit any member who cannot adequately express himself in either language to address the House in his mother tongue.

(2) The Chairman of the Council of States or the Speaker of the House of the People may, whenever he thinks fit, make arrangements for making available in the Council of States or the House of the People, as the case may be, a summary in Hindi or English of the speech delivered by a member in any other language and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

100. (1) No discussion shall take place in Parliament with respect to the conduct of any judge of the Supreme Court or a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the judge as hereinafter provided.

Restrictions on discussion in Parliament.

(2) In this article the reference to a High Court shall be construed as including a reference to any court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of Chapter IV of this Part.

101. (1) The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure.

Courts not to inquire into proceedings of Parliament.

(2) No officer or other member of Parliament in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

*The committee is of opinion that the Speaker of the House of the People should preside at a joint sitting of the two Houses of Parliament as the House of the People is the more numerous body.

Power of President to promulgate Ordinances during recess of Parliament.

Chapter III—Legislative Powers of the President

102. (1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament assented to by the President, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions ; and

(b) may be withdrawn at any time by the President.

Explanation : Where the Houses of Parliament are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.

Chapter IV—The Federal Judicature

Establishment and constitution of Supreme Court.

103. (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and such number of other judges not being less than *seven as Parliament may by law prescribe.

(2) Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the judges of the Supreme Court and of the High Courts in the States as may be necessary for the purpose and shall hold office until he attains the age of sixty-five years :

Provided that in the case of appointment of a judge, other than the Chief Justice, the Chief Justice of India shall always be consulted :

Provided further that—

(a) a judge may, by writing under his hand addressed to the President, resign his office ;

*The committee considers that seven judges would in the beginning be sufficient and Parliament might, by law, afterwards increase the number.

(b) a judge may be removed from his office in the manner provided in clause (4).

(3) A person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India and—

(a) has been for at least five years a judge of a High Court or of two or more such courts in succession ;
or

(b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation I : In this clause 'High Court' means a High Court which exercises, or which before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II : In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person held judicial office after he became an advocate, shall be included.

(4) A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address supported by not less than two-thirds of the members present and voting has been presented to the President by both Houses of Parliament in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a judge under the last preceding clause.

(6) Every person appointed to be a judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President or some person appointed in that behalf by him a declaration according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.

104. The judges of the Supreme Court shall be entitled to such salaries and allowances, and to such rights in respect of leave and pensions, as may from time to time be fixed by or under law made by Parliament, and until they are so fixed shall be entitled to such salaries, allowances and rights

*Salaries etc., of
judges.*

in respect of leave of absence or pension as are specified in the Second Schedule :

Provided that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

*Appointment
of acting Chief
Justice.*

105. When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other judges of the court as the President may appoint for the purpose.

*Appointment
of ad hoc
judges.*

106. (1) If at any time there should not be a quorum of the judges of the Supreme Court available to hold or continue any session of the court, the Chief Justice may after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the court, as an *ad hoc* judge, for such period as may be necessary, of a judge of a High Court to be nominated by the Chief Justice of India.

(2) It shall be the duty of the judge, who has been so nominated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a judge of the Supreme Court.

*Attendance of
retired judges at
sittings of the
Supreme Court.*

*107. Notwithstanding anything contained in this Chapter, the Chief Justice of India may at any time, subject to the provisions of this article, request any person who has held the office of a judge of the Supreme Court or of the Federal Court to sit and act as a judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of that court:

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a judge of that court unless he consents so to do.

*Seat of Sup-
reme Court.*

108. The Supreme Court shall be a court of record and shall sit in Delhi and at such other place or places, if any, as the Chief Justice may, with the approval of the President, from time to time, appoint.

*The employment of retired judges follows the practice in the United Kingdom and in the United States of America.

109. Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

Original jurisdiction of the Supreme Court.

- (a) between the Government of India and one or more States, or
- (b) between the Government of India and any State or States on one side and one or more other States on the other, or
- (c) between two or more States,

if in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends :

Provided that the said jurisdiction shall not extend to—

- (i) a dispute to which a State for the time being specified in Part III of the First Schedule is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, *sanad* or other similar instrument which was entered into or executed before the date of commencement of this Constitution and has, or has been, continued in operation after that date ;
- (ii) a dispute to which any State is a party, if the dispute arises out of any provision of a treaty, agreement, engagement, *sanad* or other similar instrument which provides that the said jurisdiction shall not extend to such a dispute.

110. (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in a State, whether in a civil, criminal or other proceeding, if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution.

Appellate jurisdiction of Supreme Court in appeals from High Courts in States in certain cases.

(2) Where the High Court has refused to give such a certificate, the Supreme Court may, if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution, grant special leave to appeal from such judgment, decree or final order.

(3) Where such a certificate is given, or such leave is granted, any party in the case may appeal to the Supreme Court not only on the ground that any such question as aforesaid has been wrongly decided, but also on any other ground.

Explanation : For the purposes of this article, the expression “final order” includes an order deciding an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case.

Appellate jurisdiction of Supreme Court in appeals from High Courts in the territory of India except the States for the time being specified in Part III of the First Schedule in other cases.

111. (1) An appeal shall lie to the Supreme Court from a judgment, decree or final order in a civil proceeding of a High Court in the territory of India except the States for the time being specified in Part III of the First Schedule, if the High Court certifies—

- (a) that the amount or value of the subject-matter of the dispute in the court of first instance and still in dispute on appeal was and is not less than twenty thousand rupees ; or
- (b) that the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value; or
- (c) that the case is a fit one for appeal to the Supreme Court ;

and, where the judgment, decree or final order appealed from affirms the decision of the court immediately below, in any case other than one referred to in clause (c), if the High Court further certifies that the appeal involves some substantial question of law.

(2) Notwithstanding anything contained in article 110 of this Constitution, any party appealing to the Supreme Court under clause (1) of this article may urge as one of the grounds in such appeal that the case involves a substantial question of law as to the interpretation of this Constitution which has been wrongly decided.

Special leave to appeal by the Supreme Court in certain other cases.

112. The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree or final order in any cause or matter, passed or made by any court or tribunal in the territory of India except the States for the time being specified in Part III of the First Schedule, in cases where the provisions of article 110 or article 111 of this Constitution do not apply.

Reference to the Supreme Court by High Courts in States for the time being specified in Part III of the First Schedule in certain cases.

113. (1) If in the course of any civil, criminal or other proceeding in a High Court in any State for the time being specified in Part III of the First Schedule, any question as to the applicability or interpretation of any law of Parliament or of the Legislature of any State other than such State, which is material for the determination of any issue in such proceeding, arises, the High Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case with particular reference to such question with its own opinion thereon and refer such question to the Supreme Court for opinion.

(2) The Supreme Court may, where any such High Court

refuses to state a case under clause (1) of this article, require a case to be so stated.

(3) When a case is so stated either under clause (1) or under clause (2) of this article, the High Court shall stay all proceedings until the opinion of the Supreme Court is received.

(4) The Supreme Court shall, after giving the parties an opportunity of being heard, decide the question so referred, and shall cause a copy of its opinion to be transmitted to the High Court and such High Court shall on receipt thereof proceed to dispose of the case in conformity with the opinion of the Supreme Court.

(5) The Supreme Court may at any stage return any case stated under this article in order that further facts may be stated therein.

114. (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer.

Enlargement of the jurisdiction of the Supreme Court.

(2) The Supreme Court shall have such further jurisdiction and powers with respect to any matter as the Government of India and any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court.

115. Parliament may, by law, confer on the Supreme Court power to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for any purposes other than those mentioned in clause (2) of article 25 (which relates to the enforcement of fundamental rights) of this Constitution.

Conferment on the Supreme Court of powers to issue certain writs.

116. Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

Ancillary power of Supreme Court.

117. The law declared by the Supreme Court shall be binding on all courts within the territory of India.

Law declared by Supreme Court to be binding on all courts.

118. (1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter

Enforcement of decrees and orders of Supreme Court.

and orders as to discovery, etc.

pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament.

(2) Subject to the provisions of any law made in this behalf by Parliament the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

Power of President to consult Supreme Court.

119. (1) If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that court for consideration and the court may, after such hearing as it thinks fit, report to the President its opinion thereon.

(2) The President may, notwithstanding anything contained in clause (i) of the proviso to article 109 of this Constitution, refer a dispute of the kind mentioned in the said clause to the Supreme Court for decision, and the Supreme Court shall thereupon, after giving the parties an opportunity of being heard, decide the same and report the fact to the President.

Civil and judicial authorities to act in aid of the Supreme Court.

Rules of Court, etc.

120. All authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court.

*121. (1) Subject to the provisions of any law made by Parliament, the Supreme Court may from time to time, with the approval of the President, make rules for regulating generally the practice and procedure of the court including—

- (a) rules as to the persons practising before the court,
- (b) rules as to the procedure for hearing appeals and

*In the Supreme Court of the United States of America all the judges of the court are entitled to participate in the hearing of every matter, and the court never sits in divisions. The judges of that court attach the greatest importance to this practice. The committee is of opinion that this practice should be followed in India at least in two classes of cases, namely, those which involve questions of interpretation of the Constitution and those which are referred to the Supreme Court for opinion by the President. Whether the same practice should not be extended to other

other matters including the time within which appeals to the court are to be entered and the time to be allowed to advocates appearing before the court to make their submissions in respect thereof,

(c) rules as to the cost of and incidental to any proceedings in the court and as to the fees to be charged in respect of proceedings therein,

(d) rules as to the granting of bail,

(e) rules as to stay of proceedings, and

(f) rules providing for the summary determination of any appeal which appears to the court to be frivolous or vexatious or brought for the purpose of delay.

(2) The minimum number of judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution, or for the purpose of hearing any reference under article 119 of this Constitution shall be five :

Provided that it shall be open to every judge to sit for the said purposes unless owing to illness, personal interest or other sufficient cause he is unable to do so.

(3) No opinion for the purpose of any report under article 119 of this Constitution and no judgment shall be delivered by the Supreme Court save in open court.

(4) No such report shall be made and no judgment shall be delivered by the Supreme Court save with the concurrence of a majority of the judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a judge who does not concur from delivering a dissenting opinion or judgment.

122. (1) The salaries, allowances and pensions payable to or in respect of the officers and servants of the Supreme Court shall be fixed by the Chief Justice of India in consultation with the President.

Salaries, allowances and pensions of officers and servants and the expenses of the Supreme Court.

classes of cases is a matter which Parliament may regulate by law.

Item (b) giving the court power to make rules for regulating the time to be allowed to advocates to make their submissions to the court has also been inserted in the article. This follows the practice prevalent in the Supreme Court of the United States, where the advocates are normally allowed only one hour to argue each case, the rest of their submissions being in writing. (One member of the committee, Shri Alladi Krishnaswami Ayyar, considers it unnecessary expressly to mention this power in this article, because in his view the position of the Supreme Court in India, in respect of its general appellate functions, is different from that of the Supreme Court of the United States.)

(2) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the revenues of India, and any fees or other moneys taken by the court shall form part of those revenues.

Construction of references to High Courts in States specified in Part III of the First Schedule.

123. (1) References in articles 103 and 106 of this Chapter to a High Court in, or exercising jurisdiction in, a State for the time being specified in Part III of the First Schedule shall be construed as references to any court which the President may, upon being satisfied after consultation with the Supreme Court and the Ruler of the State that such court is a court comparable to any of the High Courts in the States for the time being specified in Part I of that Schedule, declare to be a High Court for the purposes of those articles.

(2) References in articles 110 and 113 of this Chapter to a High Court in a State for the time being specified in Part III of the First Schedule shall be construed as references to the court of final jurisdiction in the State with regard to the proceeding in respect of which an appeal or reference is provided for in those articles.

Chapter V—Auditor-General of India

Auditor-General of India.

124. (1) There shall be an Auditor-General of India, who shall be appointed by the President and shall only be removed from office in like manner and on the like grounds as a judge of the Supreme Court.

(2) The salary, allowances and other conditions of service of the Auditor-General shall be such as may be determined by Parliament by law and until they are so determined shall be as specified in the Second Schedule:

Provided that neither the salary of an Auditor-General nor his rights in respect of leave of absence, pension or age of retirement shall be varied to his disadvantage after his appointment.

(3) The Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

(4) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-General shall be fixed by the Auditor-General in consultation with the President.

(5) The salaries, allowances and pensions payable to or

in respect of the Auditor-General and members of his staff shall be charged upon the revenues of India.

125. The Auditor-General shall perform such duties and exercise such powers in relation to the accounts of the Government of India and of the Government of any State as are or may be prescribed by or under any law made by Parliament.

Duties and powers of the Auditor-General.

Explanation: In this article the expression "law made by Parliament" includes any existing law for the time being in force in the territory of India.

126. The accounts of the Government of India shall be kept in such form as the Auditor-General of India may, with the approval of the President, prescribe and, in so far as the Auditor-General of India may, with the like approval, give any directions with regard to the methods or principles in accordance with which any accounts of the Government of any State ought to be kept, it shall be the duty of the Government of the State to cause accounts to be kept accordingly.

Power of Auditor-General of India to give directions as to accounts.

127. The reports of the Auditor-General of India relating to the accounts of the Government of India shall be submitted to the President, who shall cause them to be laid before Parliament.

Audit reports.

PART VI

THE STATES IN PART I OF THE FIRST SCHEDULE

Chapter I—General

128. In this Part, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I of the First Schedule.

Definition.

Chapter II—The Executive

The Governor

129. There shall be a Governor for each State.

Governors of States.

130. (1) The executive power of the State shall be vested in the Governor and may be exercised by him in accordance with the Constitution and the law.

Executive power of States.

(2) Nothing in this article shall—

(a) be deemed to transfer to the Governor any functions conferred by any existing law on any other authority; or

- (b) prevent Parliament or the Legislature of the State from conferring by law functions on any authority subordinate to the Governor.

Election of Governor.

131. The Governor of a State shall be elected by direct vote of all persons who have the right to vote at a general election for the Legislative Assembly of the State.

Alternatively

Appointment of Governor.

*131. The Governor of a State shall be appointed by the President by warrant under his hand and seal from a panel of four candidates to be elected by the members of the Legislative Assembly of the State, or, where there is a Legislative Council in the State, by all the members of the Legislative Assembly and of the Legislative Council of the State assembled at a joint meeting, in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

Term of office of Governor.

132. The Governor shall hold office for a term of **five years from the date on which he enters upon his office:

Provided that—

- (a) a Governor may, by resignation under his hand addressed to the Speaker of the Legislative Assembly of the State or where there are two Houses of the Legislature of the State, to the Speaker of the Legislative Assembly and the Chairman of the Legislative Council of the State, resign his office;
- (b) a Governor may, for ***violation of the Constitution, be removed from office by impeachment in the manner provided in article 137 of this Constitution;
- (c) a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

*Some of the members of the committee are strongly in favour of this alternative, because they consider that the co-existence of a Governor elected by the people and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in administration.

**The committee is of opinion that the term of office of the Governor should be five years instead of four years in view of the change suggested by the committee in the life of the Assembly from four years to five years.

***The committee is of opinion that the Governor should be impeached only for violation of the Constitution as in the case of the President and not for any misbehaviour.

*133. A person who holds, or who has held, office as Governor shall be eligible for reelection/reappointment to that office once, but only once.

134. (1) No person shall be eligible for election as Governor unless he is a citizen of India and has completed the age of thirty-five years.

(2) A person shall not be eligible for election as a Governor of a State—

(a) if he is disqualified for being chosen as a member of the Legislative Assembly of the State:

Provided that it shall not be necessary for any such person to be a resident of the State; or

(b) if he holds any office or position of emolument under the Government of India or the Government of any State for the time being specified in the First Schedule, or under any local or other authority subject to the control of any of the said Governments.

Explanation: For the purposes of this clause a person shall not be deemed to hold any office or position of emolument by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I of the First Schedule; or

(b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or, where there are two Houses of the Legislature of the State, to the Lower House of such Legislature, and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

Alternatively

**134. (1) No person shall be eligible for appointment as Governor unless he is a citizen of India and has completed the age of thirty-five years.

(2) A person shall not be eligible for appointment as Governor of a State if he is disqualified for being chosen as a member of the Legislative Assembly of the State:

Provided that it shall not be necessary for any such person to be a resident of the State.

*Eligibility of
re-election/re-
appointment as
Governor.
Qualifications
for election as
Governor.*

*Qualifications
for appoint-
ment as
Governor.*

*If the second alternative is adopted in article 131, the word "reappointment" will have to be used in this article instead of the word "reelection".

**If the second alternative is adopted in article 131, this alternative will have to be adopted in the present article.

*Conditions of
Governor's
office.*

135. (1) The Governor shall not be a member either of Parliament or of the Legislature of any State for the time being specified in the First Schedule, and if a member of Parliament or of the Legislature of any such State be elected/*appointed Governor, he shall be deemed to have vacated his seat in Parliament or such Legislature, as the case may be, on the date on which he enters upon his office as Governor.

(2) The Governor shall not hold any other office or position of emolument.

(3) The Governor shall have an official residence, and there shall be paid to the Governor such emoluments and allowances as may be determined by the Legislature of the State by law and, until provision in that behalf is so made, such emoluments and allowances as are specified in the Second Schedule.

(4) The emoluments and allowances of the Governor shall not be diminished during his term of office.

*Affirmation or
oath by the
Governor or
person discharg-
ing the func-
tions of the
Governor before
entering office.*

136. Every Governor and every person discharging the functions of the Governor shall before entering upon his office make and subscribe in the presence of the members of the Legislature of the State an affirmation or oath in the following form, that is to say :

I, A. B., do solemnly affirm (or swear) that I will faithfully execute the office of Governor (or discharge the functions of the Governor of _____ (name of the State) and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of _____ (name of the State).

*Procedure for
impeachment
of the Gov-
ernor.*

137. (1) When a Governor is to be impeached for violation of the Constitution, the charge shall be preferred by the Legislative Assembly of the State.

(2) No such charge shall be preferred unless—

(a) the proposal to prefer such charge is contained in a resolution which has been moved after a notice in writing signed by not less than thirty members of the Assembly has been given of their intention to move the resolution, and

(b) the resolution has been supported by not less than two-thirds of the total membership of the Assembly.

*If the second alternative is adopted in article 131, the word "appointed" will have to be used in clause (1) of this article instead of the word "elected".

(3) When a charge has been so preferred, the Speaker of the Assembly shall inform the Chairman of the Council of States and thereupon the Council of States shall appoint a committee which may consist of or include persons who are not members of the Council, to investigate the charge and the Governor shall have the right to appear and to be represented at such investigation.

(4) If as a result of the investigation a resolution is passed, supported by not less than two-thirds of the total membership of the Council of States declaring that the charge preferred against the Governor has been sustained, such resolution shall have the effect of removing the Governor from his office as from the date on which the resolution is communicated to the Speaker of the Assembly.

*138. The Legislature of a State may make such provision as it thinks fit/The President may make such provision as he thinks fit for the discharge of the functions of the Governor of the/a State in any contingency not provided for in this Chapter.

Power of the Legislature of the State/the President to provide for the discharge of the functions of the Governor in certain contingencies.

*If the second alternative is adopted in article 131, the words "The President may make such provision as he thinks fit" will have to be used in this article instead of the words "The Legislature of a State may make such provision as it thinks fit" and the words "a State" will have to be used for the words "the State" in this article.

The committee is of opinion that whether the Governor is elected by the people or appointed by the President from a panel elected by the Legislature, it is unnecessary to have a Deputy Governor. Unlike the Vice-President at the Centre, the Deputy Governor cannot be made *ex-officio* Chairman of the Upper House, because in most of the States there will be no Upper House. The result is that the Deputy Governor will have no definite function to perform so long as the Governor is there. The only ground for creating the office of a Deputy Governor appears to be that there must be some person to step into the position of the Governor upon the occurrence of a sudden vacancy. The making of such a provision can be left to the Legislature of the State or to the President, as the case may be, e.g., the Legislature or the President may provide in advance that, in the event of a sudden vacancy occurring in the office of the Governor, the Chief Justice shall discharge the functions of the Governor (cf. paragraph 6 of the Letters Patent constituting the office of Governor-General of the Union of South Africa, where it is provided that the Chief Justice of South Africa may, in certain contingencies, exercise the powers of the Governor-General).

*Time of holding elections/
time of holding
elections to constitute a panel
for the filling of
vacancies in the
office of the
Governor.*

*Matters relating
to or connected
with the
election of a
Governor/the
election to constitute a panel
for the appointment of a
Governor.*

*Power of Governor to grant
pardons, etc.,
and to suspend,
remit or commute sentences
in certain cases.*

*Extent of executive power of
States.*

*139. (1) An election/An election to constitute a panel for the purpose of filling a vacancy caused by the expiration of the term of office of a Governor shall be completed before the expiration of the term.

(2) An election/An election to constitute a panel for the purpose of filling a vacancy in the office of Governor occurring by reason of his death, resignation or removal or otherwise shall be held as soon as possible after the occurrence of the vacancy and the person elected/appointed to fill the vacancy shall be entitled to hold office for the full term of five years as provided in article 132 of this Constitution.

**140. (1) All doubts and disputes arising out of or in connection with the election of a Governor/the election to constitute a panel for the purpose of the appointment of a Governor shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) Subject to the provisions of this Constitution, the Legislature of the State may, by law, regulate any matter relating to or connected with the election of a Governor/the election to constitute a panel for the purpose of the appointment of a Governor.

141. The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence, of any person convicted of any offence against any law relating to a matter with respect to which the Legislature of the State has power to make laws.

142. Subject to the provisions of this Constitution, the executive power of each State shall extend—

(a) to the matters with respect to which the Legislature of the State has power to make laws, and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable under any agreement entered into with any State or group of States for the time being specified in Part III of the First Schedule under article 236 or article 237 of this Constitution.

*If the second alternative is adopted in article 131, then the words "An election to constitute a panel" will have to be used in clauses (1) and (2) of this article instead of the words "An election" and the word "appointed" will have to be used in clause (2) of this article instead of the word "elected".

**If the second alternative is adopted in article 131, then the words "the election to constitute a panel for the purpose of the appointment of a Governor" will have to be used in clauses (1) and (2) of this article instead of the words "the election of a Governor".

Council of Ministers

143. (1) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

Council of Ministers to aid and advise Governor.

(2) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

144. (1) The Governor's Ministers shall be appointed by him and shall hold office during his pleasure :

Other provisions as to Ministers.

Provided that in the States of Bihar, Central Provinces and Berar and Orissa, there shall be a Minister in charge of tribal welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.

(2) Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.

(3) A Minister who, for any period of six consecutive months, is not a member of the Legislature of the State shall at the expiration of that period cease to be a Minister.

(4) In choosing his Ministers and in his relations with them the Governor shall be generally guided by the Instructions set out in the Fourth Schedule, but the validity of anything done by the Governor shall not be called in question on the ground that it was done otherwise than in accordance with such Instructions.

(5) The salaries and allowances of Ministers shall be such as the Legislature of the State may from time to time by law determine and, until the Legislature of the State so determine, shall be as specified in the Second Schedule.

(6) The functions of the Governor under this article with respect to the appointment and dismissal of Ministers shall be exercised by him in his discretion.

Advocate-General for the State.

The Advocate-General for the State

145. (1) The Governor of each State shall appoint a person who is qualified to be appointed a judge of a High Court, to be Advocate-General for the State.

(2) It shall be the duty of the Advocate-General to give advice to the Government of the State upon such legal matters and to perform such other duties of a legal character as may from time to time be referred or assigned to him by the Governor, and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) The Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is reappointed.

(4) The Advocate-General shall receive such remuneration as the Governor may determine.

Conduct of Government Business

Conduct of business of the Government of a State.

146. (1) All executive action of the Government of a State shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

Duties of Chief Minister as respects the Legislatures in information to Governor, etc.

147. It shall be the duty of the Chief Minister of each State—

- (a) to communicate to the Governor of the State all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation;
- (b) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for; and
- (c) if the Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Chapter III—The State Legislature General

Constitution of Legislatures in States in Part I

148. (1) For every State there shall be a Legislature which shall consist of the Governor; and

- (a) in the States of———,*
two Houses,

*of the First
Schedule.*

- (b) in other States, one House.

(2) Where there are two Houses of the Legislature of a State, one shall be known as the Legislative Council and the other as the Legislative Assembly and where there is only one House, it shall be known as the Legislative Assembly.

149. (1) Subject to the provisions of articles 294 and 295 of this Constitution the Legislative Assembly of each State shall be composed of members chosen by direct election.

*Composition of
the Legislative
Assemblies.*

(2) The election shall be on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or any law made by the Legislature of the State on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such elections.

(3) The representation of each territorial constituency in the Legislative Assembly of a State shall be on the basis of the population of that constituency as ascertained at the last preceding census and shall, save in the case of the autonomous districts of Assam, be on a scale of not more than one representative for every lakh of the population:

Provided that the total number of members in the Legislative Assembly of a State shall in no case be more than three hundred or less than sixty.

(4) Upon the completion of each census, the representation of the several territorial constituencies in the Legislative Assembly of each State shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as the Legislature of the State may by law determine:

Provided that such readjustment shall not affect representation to the Legislative Assembly until the dissolution of the then existing Assembly.

150. (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five per cent of the total number of members in the Legislative Assembly of that State.

*Composition of
the Legislative
Councils.*

*The names of these States will be filled in when it has been ascertained which of the States are to have two Houses.

(2) Of the total number of members in the Legislative Council of a State—

- (a) one-half shall be chosen from panels of candidates constituted under clause (3) of this article;
- (b) one-third shall be elected by the members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote ; and
- (c) the remainder shall be nominated by the Governor.

(3) Before the first general election and, thereafter, before each triennial election under clause (2) of article 151 of this Constitution to the Legislative Council of a State, five panels of candidates shall be formed, of which one shall contain the names of representatives of universities in the State and the remaining four shall respectively contain the names of persons having special knowledge or practical experience in respect of the following subjects, namely :

- (a) literature, art and science ;
- (b) agriculture, fisheries and allied subjects ;
- (c) engineering and architecture ;
- (d) public administration and social services.

(4) Each panel of candidates constituted under clause (3) of this article shall contain at least twice the number to be elected from such panel.

(5) For bye-elections clauses (3) and (4) of this article shall have effect subject to such adaptations and modifications as may be prescribed by the Legislature of the State by law.

*Duration of
State Legisla-
tures.*

151. (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for *five years from the date appointed for its first meeting and the expiration of the said period of *five years shall operate as a dissolution of the Assembly.

(2) The Legislative Council of a State shall not be subject to dissolution, but as nearly as may be one-third of the members thereof shall retire as soon as may be on the

*The committee has inserted "five years" instead of "four years" as the life of the Assembly, as it considers that under the Parliamentary system of Government the first year of a Minister's term of office would generally be taken up in gaining knowledge of the work of administration and the last year would be taken up in preparing for the next general election, and there would thus be only two years left for effective work which would be too short a period for planned administration.

expiration of every third year in accordance with the provisions made in that behalf by the Legislature of the State by law.

152. A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he is, in the case of a seat in a Legislative Assembly, not less than twenty-five years of age, and in the case of a seat in a Legislative Council, not less than thirty-five years of age.

Age-limit for membership of the State Legislature.

153. (1) The House or Houses of the Legislature of the State shall be summoned to meet twice at least in every year, and six months shall not intervene between their last sitting in one session and the date appointed for their first sitting in the next session.

Sessions of the State Legislature, propagation and dissolution.

(2) Subject to the provisions of this article, the Governor may from time to time—

- (a) summon the Houses or either House to meet at such time and place as he thinks fit;
- (b) prorogue the House or Houses;
- (c) dissolve the Legislative Assembly.

(3) The functions of the Governor under sub-clauses (a) and (c) of clause (2) of this article shall be exercised by him in his discretion.

154. (1) The Governor may address the Legislative Assembly or in the case of a State having a Legislative Council, either House of the Legislature of the State, or both Houses assembled together, and may for that purpose require the attendance of members.

Right of Governor to address and send messages to the Houses.

(2) The Governor may send messages to the House or Houses of the Legislature of the State whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which any message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

*155. (1) At the commencement of every session, the Governor shall address the Legislative Assembly or in the case of a State having a Legislative Council, both Houses assembled together and inform the Legislature of the cause of its summons.

Special address by the Governor at the commencement of each session and discussion in the Legislature of matters referred to in the address.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for a

*This clause which is based on the practice prevalent in the Parliament of the United Kingdom has been inserted by the committee as it considers that it will prove useful in our Constitution also.

discussion of the matters referred to in such address and for the precedence of such discussion over other business of the House.

Rights of Ministers and Advocate-General as respects the Houses.

156. Every Minister and the Advocate-General for a State shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly of the State or, in the case of a State having a Legislative Council, both Houses and any joint sitting of the Houses, and to speak in, and otherwise to take part in the proceedings of, any committee of the Legislature of which he may be named a member, but shall not, by virtue of this article, be entitled to vote.

Officers of The State Legislature

The Speaker and Deputy Speaker of the Legislative Assembly.

157. Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof, and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Vacation and resignation of, and removal from the office of, Speaker and Deputy Speaker.

158. A member holding office as Speaker or Deputy Speaker of an Assembly—

- (a) shall vacate his office if he ceases to be a member of the Assembly ;
- (b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and
- (c) may be removed from his office for incapacity or want of confidence by a resolution of the Assembly passed by a majority of all the then members of the Assembly :

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution :

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

Power of the Deputy Speaker or other persons to perform the duties of the office

159. (1) While the office of Speaker is vacant the duties of the office shall be performed by the Deputy Speaker, or if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly, the Deputy Speaker or, if he is also absent such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

*of or to act as,
Speaker.*

160. The Legislative Council of every State having such Council, shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

*The Chairman
and Deputy
Chairman of the
Legislative
Council.*

161. A member holding office as Chairman or Deputy Chairman of a Legislative Council—

- (a) shall vacate his office if he ceases to be a member of the Council ;
- (b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and
- (c) may be removed from his office for incapacity or want of confidence by a resolution of the Council passed by a majority of all the then members of the Council :

*Vacation and
resignation of,
and removal
from, the office
of Chairman
and Deputy
Chairman.*

Provided that no resolution for the purpose of clause (c) of this article shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution.

162. (1) While the office of Chairman is vacant, the duties of the office shall be performed by the Deputy Chairman or if the office of Deputy Chairman is also vacant by such member of the Council as the Governor may appoint for the purpose.

*Power of the
Deputy Chair-
man or other
persons to per-
form the
duties of
the office of,
or to act as,
Chairman.*

(2) During the absence of the Chairman from any sitting of the Council, the Deputy Chairman or, if he is also absent such person as may be determined by the rules of procedure of the Council, or, if no such person is present, such other person as may be determined by the Council, shall act as Chairman.

163. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly and to the Chairman and the Deputy Chairman of the Legislative Council such salaries and allowances as may be respectively fixed by the

*Salaries and
allowances of
the Speaker
and Deputy
Speaker and the*

Chairman and Deputy Chairman.

Legislature of the State by law, and, until provision in that behalf is so made, such salaries and allowances as are specified in the Second Schedule.

Conduct of Business

Voting in Houses; power of Houses to act notwithstanding vacancies and quorum.

164. (1) Save as provided in this Constitution, all questions in a House or a joint sitting of two Houses of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman or person acting as such.

The Speaker or Chairman or person acting as such shall not vote in the first instance but shall have and exercise a casting vote in the case of an equality of votes.

(2) A House of the Legislature of a State shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature of a State shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do, sat or voted or otherwise took part in the proceedings.

(3) If at any time during a meeting of the Legislative Assembly or the Legislative Council of a State there is no quorum, it shall be the duty of the Speaker or Chairman or person acting as such either to adjourn the House or to suspend the meeting until there is a quorum.

The quorum shall be ten members or one-sixth of the total number of members of the House, whichever is greater.

Disqualifications of Members

Declaration by members.

165. Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor or some person appointed in this behalf by him, a declaration according to the form set out for the purpose in the Third Schedule.

Vacation of seat.

166. (1) No person shall be a member of both Houses of the Legislature of a State and provision shall be made by the Legislature of the State by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) No person shall be a member both of Parliament and of the Legislature of a State and if a person is chosen a member both of Parliament and of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the Governor of the State, that person's seat in the Legislature of the State shall become vacant, unless he has previously resigned his seat in Parliament.

(3) If a member of a House of the Legislature of a State—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of the next succeeding article ;
or

(b) resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be,

his seat shall thereupon become vacant.

(4) If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant :

Provided that in computing the said period of sixty days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

167. (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—

Disqualifications for membership.

(a) if he holds any office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule other than an office declared by the Legislature of the State by law not to disqualify its holder ;

(b) if he is of unsound mind and stands so declared by a competent court ;

(c) if he is an undischarged insolvent ;

**(d) if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power ;*

(e) if he is so disqualified by or under any law made by the Legislature of the State.

(2) For the purposes of this article, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State for the time being specified in the First Schedule by reason only that—

(a) he is a Minister either for India or for any State for the time being specified in Part I of the First Schedule ; or

*The committee has inserted this sub-clause following the provisions of section 44(i) of the Australia Constitution Act.

- (b) he is a Minister for any State for the time being specified in Part III of the First Schedule, if he is responsible to the Legislature of the State, or where there are two Houses of the Legislature of the State, to the Lower House of such Legislature and if not less than three-fourths of the members of such Legislature or House, as the case may be, are elected.

Penalty for sitting and voting before making declaration under article 165 or when not qualified or when disqualified.

168. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council of a State before he has complied with the requirements of article 165 of this Constitution, or when he knows that he is not qualified or that he is disqualified for membership thereof or that he is prohibited from so doing by the provisions of any law made by the Legislature of the State, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the State.

Privileges and Immunities of Members

Privileges, etc. of members.

169. (1) Subject to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects the privileges and immunities of members of a House of the Legislature of a State shall be such as may from time to time be defined by the Legislature by law and until so defined, shall be such as are enjoyed by the members of the House of Commons of the Parliament of the United Kingdom at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) of this article shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise take part in the proceedings of, a House of the Legislature of a State as they apply in relation to members of that Legislature.

Salaries and allowances of members.

170. Members of the Legislative Assembly and the Legislative Council of a State shall be entitled to receive such

salaries and allowances as may from time to time be determined by the Legislature of the State by law, and, until provision in that respect is so made, allowances at such rates and upon such conditions as were immediately before the date of commencement of this Constitution applicable in the case of members of the Provincial Legislative Assembly for that State.

Legislative Procedure

171. (1) Subject to the provisions of articles 173 and 182 of this Constitution with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature of a State which has a Legislative Council.

Provisions as to introduction and passing of Bills.

(2) Subject to the provisions of articles 172 and 173 of this Constitution, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a State having a Legislative Council unless it has been agreed to by both Houses either without amendment or with such amendments only as are agreed to by both Houses.

(3) A Bill pending in the Legislature of a State shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council of a State which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly of a State, or which having been passed by the Legislative Assembly is pending in the Legislative Council, shall lapse on a dissolution of the Assembly.

172. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council, more than six months elapse from the date of the reception of the Bill by the Council without the Bill being passed by both Houses, the Governor may, unless the Bill has lapsed by reason of a dissolution of the Legislative Assembly, summon the Houses to meet in a joint sitting for the purposes of deliberating and voting on the Bill :

Joint sitting of both Houses in States having Legislative Councils in certain cases.

Provided that nothing in this clause shall apply to a Money Bill.

(2) In reckoning any such period of six months as is referred to in clause (1) of this article, no account shall be taken of any time during which both Houses are prorogued or adjourned for more than four days.

(3) If at the joint sitting of the two Houses summoned

in accordance with the provisions of this article the Bill, with such amendments, if any, as are agreed to in a joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses :

Provided that at a joint sitting—

(a) if the Bill has not been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill ;

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed ;
and the decision of the person presiding as to the amendments which are admissible under this clause shall be final.

Special procedure in respect of Money Bills.

*173. (1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a State having a Legislative Council, it shall be transmitted to the Legislative Council for its recommendations, and the Legislative Council shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by the Legislative

*This article and all other provisions in this Chapter relating to "Money Bills" have been inserted to give effect to the recommendations of the Expert Committee on the Financial Provisions of the Constitution.

Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

174. (1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely :

*Definition of
"Money Bills".*

- (a) the imposition, abolition, remission, alteration or regulation of any tax ;
- (b) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State ;
- (c) supply ;
- (d) the appropriation of the revenues of the State ;
- (e) the declaring of any expenditure to be expenditure charged on the revenues of the State, or the increasing of the amount of any such expenditure ;
- (f) the receipt of money on account of the revenues of the State or the custody or issue of such money or the audit of the accounts of the State ; or
- (g) any matter incidental to any of the matters specified in items (a) to (f) of this clause.

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature of a State which has a Legislative Council is a Money Bill or not, the decision of the Speaker of the Legislative Assembly of such State thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under the last preceding article, and when it is presented to the Governor for assent under the next succeeding article, the certificate

of the Speaker of the Legislative Assembly signed by him that it is a Money Bill.

Assent to Bills.

175. A Bill which has been passed by the Legislative Assembly of a State or, in the case of a State having a Legislative Council, has been passed by both Houses of the Legislature of the State, shall be presented to the Governor and the Governor shall declare either that he assents to the Bill or that he withholds assent therefrom or that he reserves the Bill for the consideration of the President :

Provided that where there is only one House of the Legislature and the Bill has been passed by the House, the Governor may, in his discretion, return the Bill together with a message requesting that the House will reconsider the Bill or any specified provisions thereof and, in particular, will reconsider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the House shall reconsider it accordingly and if the Bill is passed again by the House with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.

Bills reserved for consideration.

176. When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom :

Provided that where the Bill is not a Money Bill the President may direct the Governor to return the Bill to the House or, as the case may be, the Houses of the Legislature of the State together with such a message as is mentioned in the proviso to the last preceding article and, when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and, if it is again passed by them with or without amendment, it shall be presented again to the President for his consideration.

Procedure in Financial Matters

Annual financial statement.

177. (1) The Governor shall in respect of every financial year cause to be laid before the House or Houses of the Legislature of the State a statement of the estimated receipts and expenditure of the State for that year, in this Part of this Constitution referred to as the "annual financial statement".

(2) The estimates of expenditure embodied in the annual financial statement shall show separately—

(a) the sums required to meet expenditure described by

this Constitution as expenditure charged upon the revenues of the State; and

- (b) the sums required to meet other expenditure proposed to be made from the revenues of the State;

and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the revenues of each State—

- (a) the emoluments and allowances of the Governor and other expenditure relating to his office;
- (b) the emoluments and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly, and in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council;
- (c) debt charges for which the State is liable including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debt;
- (d) expenditure in respect of the salaries and allowances of judges of any High Court;
- (e) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal;
- (f) any other expenditure declared by this Constitution or by the Legislature of the State by law to be so charged.

178. (1) So much of the estimates as relates to expenditure charged upon the revenues of a State shall not be submitted to the vote of the Legislative Assembly, but nothing in this clause shall be construed as preventing the discussion in the Legislature of those estimates.

*Procedure in
Legislature with
respect to esti-
mates.*

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Governor.

179. (1) The Governor shall authenticate by his signature a schedule specifying—

*Authentication
of schedule of
authorised ex-
penditure.*

- (a) the grants made by the Assembly under the last preceding article;

(b) the several sums required to meet the expenditure charged on the revenues of the State, but not exceeding in any case, the sum shown in the statement previously laid before the House or Houses.

(2) The schedule so authenticated shall be laid before the Assembly but shall not be open to discussion or vote in the Legislature.

(3) Subject to the provisions of the next two succeeding articles, no expenditure from the revenues of the State shall be deemed to be duly authorised unless it is specified in the schedule so authenticated.

*Supplementary
statements of
expenditure.*

180. If in respect of any financial year further expenditure from the revenues of the State becomes necessary over and above the expenditure theretofore authorised for that year, the Governor shall cause to be laid before the House or Houses a supplementary statement showing the estimated amount of that expenditure, and the provisions of the preceding articles shall have effect in relation to that statement and that expenditure as they have effect in relation to the annual financial statement and the expenditure mentioned therein.

Excess grants.

*181. If in any financial year expenditure from the revenues of the State has been incurred on any service for which the vote of the Legislative Assembly is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Assembly and the provisions of articles 178 and 179 of this Constitution shall have effect in relation to such demand as they have effect in relation to a demand for a grant.

*Special provisions as to
financial Bills.*

182. (1) A Bill or amendment making provision for any of the matters specified in items (a) to (f) of clause (1) of article 174 of this Constitution shall not be introduced or moved except on the recommendation of the Governor, and a Bill making such provision shall not be introduced in a Legislative Council :

Provided that no recommendation shall be required under this clause for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other

*This article has been inserted to follow the recommendation of the Expert Committee on the Financial Provisions of the Constitution.

pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a State shall not be passed by a House of the Legislature of the State unless the Governor has recommended to that House the consideration of the Bill.

Procedure Generally

183. (1) A House of the Legislature of a State may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

*Rules of
procedure.*

(2) Until rules are made under clause (1) of this article, the rules of procedure and standing orders in force immediately before the commencement of this Constitution with respect to the Provincial Legislature for the State shall have effect in relation to the Legislature of that State subject to such modifications and adaptations as may be made therein by the Speaker of the Legislative Assembly, or the Chairman of the Legislative Council, as the case may be.

(3) In a State having a Legislative Council the Governor, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the Legislative Assembly*, or in his absence such person as may be determined by rules of procedure made under clause (3) of this article, shall preside.

184. (1) In the Legislature of a State, business shall be transacted in the language or languages generally used in that State or in Hindi or in English.

*Language to be
used in the
Legislatures of
States.*

(2) The Speaker of the Legislative Assembly or the Chairman of the Legislative Council may, whenever he thinks fit, make arrangements for making available in the Assembly or the Council, as the case may be, a summary in any language generally used in the State or in English

*The committee is of opinion that the Speaker of the Assembly should preside at a joint sitting of the two Houses as the Assembly is the more numerous body.

of the speech delivered by a member in any other language, and such summary shall be included in the record of the proceedings of the House in which the speech has been delivered.

Restrictions on discussion in the Legislature.

185. (1) No discussion shall take place in the Legislature of a State with respect to the conduct of any judge of the Supreme Court or of a High Court in the discharge of his duties.

(2) In this article, the reference to a High Court shall be construed as including a reference to any court in a State for the time being specified in Part III of the First Schedule which is a High Court for any of the purposes of Chapter IV of Part V of this Constitution.

Courts not to inquire into proceedings of the Legislature.

186. (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

(2) No officer or other member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

Chapter IV—Legislative Power of the Governor

Power of Governor to promulgate Ordinances during recess of Legislature.

187. (1) If at any time, except when the Legislative Assembly of a State is in session, or where there is a Legislative Council in a State, except when both Houses of the Legislature are in session, the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require:

Provided that the Governor shall not, without instructions from the President, promulgate any such Ordinance if an Act of the Legislature of the State containing the same provisions would under the provisions of this Constitution have been invalid unless, having been reserved for the consideration of the President, it had received the assent of the President.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of the Legislature of the State assented to by the Governor, but every such Ordinance—

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the

State, before both the Houses, and shall cease to operate at the expiration of six weeks from the re-assembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and

(b) may be withdrawn at any time by the Governor.

Explanation: Where the Houses of the Legislature of a State having a Legislative Council are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which would not be valid if enacted in an Act of the Legislature of the State assented to by the Governor, it shall be void:

Provided that, for the purposes of the provisions of this Constitution relating to the effect of an Act of the Legislature of a State which is repugnant to an Act of Parliament or an existing law with respect to a matter enumerated in the Concurrent List, an Ordinance promulgated under this article in pursuance of instructions from the President shall be deemed to be an Act of the Legislature of the State which has been reserved for the consideration of the President and assented to by him.

Chapter V—Provisions in Cases of Grave Emergencies

188. (1) If at any time the Governor of a State is satisfied that a grave emergency has arisen which threatens the peace and tranquillity of the State and that it is not possible to carry on the Government of the State in accordance with the provisions of this Constitution, he may, by proclamation, declare that his functions shall, to such extent as may be specified in the proclamation, be exercised by him in his discretion, and any such proclamation may contain such incidental and consequential provisions as may appear to him necessary or desirable for giving effect to the objects of the proclamation including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State:

Power of Governor in grave emergencies.

Provided that nothing in this clause shall authorise the Governor to suspend, either in whole or in part, the

operation of any provision of this Constitution relating to High Courts.

(2) The proclamation shall be forthwith communicated by the Governor to the President who may, thereupon either revoke the proclamation or take such action as he considers appropriate in exercise of the emergency powers vested in him under article 278 of this Constitution.

(3) A proclamation under this article shall cease to operate at the expiration of two weeks unless revoked earlier by the Governor or by the President by public notification.

(4) The functions of the Governor under this article shall be exercised by him in his discretion.

Chapter VI—Scheduled and Tribal Areas

Definitions.

189. In this Constitution—

(a) the expression “scheduled areas” means the areas specified in Parts I to VII of the table appended to paragraph 18 of the Fifth Schedule in relation to the State to which those Parts respectively relate;

(b) the expression “tribal areas” means the areas specified in Parts I and II of the table appended to paragraph 19 of the Sixth Schedule.

Administration of scheduled and tribal areas.

190. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the scheduled areas and scheduled tribes in any State for the time being specified in Part I of the First Schedule.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the State of Assam.

Chapter VII—The High Courts in the States

Meaning of “High Court”.

191. (1) For the purposes of this Constitution the following courts shall, in relation to the territory of India except the States for the time being specified in Part III of the First Schedule, be deemed to be High Courts, that is to say,—

(a) the High Courts in Calcutta, Madras, Bombay, Allahabad, Patna and Nagpur, the High Court of East Punjab and the Chief Court in Oudh;

(b) any other court in any of these States constituted or re-constituted under this Chapter as a High Court; and

(c) any other court in any of these States which may be declared by the appropriate Legislature by law to be a High Court for the purposes of this Constitution:

Provided that if provision is made by the appropriate Legislature for the establishment of a High Court to replace any court or courts mentioned in this clause, then as from the establishment of the new court, this article shall have effect as if the new court were mentioned therein in lieu of the court or courts so replaced.

(2) Save as otherwise provided, the provisions of this Chapter shall apply to every High Court referred to in clause (1) of this article.

192. Every High Court shall be a court of record and shall consist of a Chief Justice and such other judges as the President may from time to time deem it necessary to appoint:

Constitution of High Courts.

Provided that the judges so appointed together with any additional judges appointed by the President in accordance with the following provisions of this Chapter shall at no time exceed in number such maximum as the President may by order fix in relation to that Court.

193. (1) Every judge of a High Court shall be appointed by the President by a warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and in the case of appointment of a judge other than the Chief Justice, the Chief Justice of the High Court of the State, and shall hold office until he attains the age of sixty years *or such higher age not exceeding sixty-five years may be fixed in this behalf by law of the Legislature of the State:

Appointment, and conditions of the office, of a judge of a High Court.

Provided that—

- (a) a judge may, by writing under his hand addressed to the Governor, resign his office;
- (b) a judge may be removed from his office by the President in the manner provided in clause (4) of article 103 of this Constitution for the removal of a judge of the Supreme Court;

*The provision for a higher age than 60 years does not exist in the Government of India Act, 1935. The result is that the best men from the Bar often refuse appointments on the Bench because under the existing age-limit of 60 years they would not have time to earn a full pension. It has also been pointed out that when the age-limit for judges of the Supreme Court is 65 years it would not be possible to hold that a judge was too old for a High Court after 60. In view of the different conditions prevailing in different States, the committee has added the underlined words in this article so as to enable the Legislature of each State to fix any age-limit not exceeding 65 years.

- (c) the office of the judge shall be vacated by his being appointed by the President to be a judge of the Supreme Court or of any other High Court.
- (2) A person shall not be qualified for appointment as a judge of a High Court unless he is a citizen of India and—
- (a) has held for at least ten years a judicial office in any State in or for which there is a High Court; or
 - (b) has been for at least ten years an advocate of a High Court or of two or more such courts in succession.

Explanation I: For the purposes of this clause—

- (a) in computing the period during which a person has been an advocate of a High Court, there shall be included any period during which a person held judicial office after he became an advocate;
- (b) in computing the period during which a person has held judicial office in a State for the time being specified in Part I or Part II of the First Schedule or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he held judicial office in any area which was comprised before the fifteenth day of August, 1947, within British India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area, as the case may be.

Explanation II: In sub-clauses (a) and (b) of this clause, the reference to a High Court shall be construed as including a reference to a court in a State for the time being specified in Part III of the First Schedule which is a High Court for the purposes of articles 103 and 106 of this Constitution.

Application of certain provisions relating to Supreme Court to High Courts.

194. The provisions of clauses (4) and (5) of article 103 of this Constitution shall apply in relation to a High Court as they apply in relation to the Supreme Court with the substitution of references to the High Court for references to the Supreme Court.

Declaration by judges of High Courts before entering office.

195. Every person appointed to be a judge of a High Court in a State shall, before he enters upon his office, make and subscribe before the Governor of the State or some person appointed in that behalf by him a declaration according to the form set out for the purpose in the Third Schedule.

*196. No person who has held office—

- (a) as a judge of a High Court, or
- (b) as an additional judge or temporary judge of a High Court on having been recruited from the Bar,

shall plead or act in any Court or before any authority within the territory of India.

197. The judges of each High Court shall be entitled to such salaries and allowances, and to such rights in respect of leave and pensions, as may from time to time be fixed by or under law made by the Legislature of the State in which the Court has its principal seat, and until they are so fixed, shall be entitled to such salaries, allowances and rights in respect of leave of absence or pension as are specified in the Second Schedule:

Provided that the salary of the Chief Justice of a High Court shall not be less than four thousand rupees per month and the salary of any other judge of a High Court shall not be less than three thousand and five hundred rupees per month:

Provided further that neither the salary of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

198. (1) When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other judges of the court as the President may appoint for the purpose.

(2) (a) When the office of any other judge of a High Court is vacant or when any such judge is appointed to act temporarily as a Chief Justice, or is unable to perform the duties of his office by reason of absence or otherwise, the President may appoint a person duly qualified for appointment as a judge to act as a judge of that court.

(b) The person appointed shall, while so acting, be deemed to be a judge of the court.

Prohibition of practising in courts or before any authority by a person who held office as a judge of a High Court.

Salaries, etc. of judges.

Temporary judges.

*The committee is of opinion that a person who has held office as judge of a High Court should be prohibited from practising in any court or before any authority and so also persons who have held office as additional judges or temporary judges of the court on having been recruited from the Bar.

(c) Nothing contained in this clause shall prevent the President from revoking any appointment made under this clause.

Additional judges.

199. If by reason of any temporary increase in the business of any High Court or by reason of arrears of work in any such court it appears to the President that the number of the judges of the court should be for the time being increased, the President may, subject to the foregoing provisions of this Chapter with respect to the maximum number of judges, appoint persons duly qualified for appointment as judges to be additional judges of the court for such period not exceeding two years as he may specify.

Attendance of retired judges at sittings of High Courts.

*200. Notwithstanding anything contained in this Chapter, the Chief Justice of a High Court may at any time, subject to the provisions of this article, request any person who has held the office of a judge of that court to sit and act as a judge of the court, and every such person so requested shall, while so sitting and acting, have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a judge of that court :

Provided that nothing in this article shall be deemed to require any such person as aforesaid to sit and act as a judge of that court unless he consents so to do.

Jurisdiction of existing High Courts.

201. Subject to the provisions of this Constitution and to any provisions of any law of the appropriate Legislature made by virtue of the powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the judges thereof in relation to the administration of justice in the court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of this Constitution :

Provided that any restriction to which the exercise of original jurisdiction of any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

*The employment of retired judges follows the practice in the United Kingdom and in the United States of America.

202. (1) Notwithstanding anything contained in article 25 of this Constitution, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue directions or orders in the nature of the writs of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, for the enforcement of any of the rights conferred by Part III of this Constitution and for any other purpose.

Power of High Courts to issue certain writs.

(2) The power conferred on a High Court by clause (1) of this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 25 of this Constitution.

203. (1) Every High Court shall have superintendence over all courts throughout the territories in relation to which it exercises jurisdiction.

Administrative functions of High Courts.

(2) The High Court may—

(a) call for returns from such courts;

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction, or withdraw such suit or appeal from any such court to itself;

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein :

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) of this article shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

204. If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution, it shall withdraw the case to itself and dispose of the same.

Transfer of certain cases to High Court for trial.

Explanation : In this article, "High Court" includes a court of final jurisdiction in a State for the time being specified in Part III of the First Schedule with regard to the case so pending.

Salaries, allowances and pensions of officers and servants and the expenses of High Courts.

205. (1) The salaries, allowances and pensions payable to or in respect of the officers and servants of a High Court shall be fixed by the Chief Justice of the court in consultation with the Governor of the State in which the High Court has its principal seat.

(2) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of officers and servants of the court, and the salaries and allowances of the judges of the court, shall be charged upon the revenues of the State, and any fees or other moneys taken by the court shall form part of those revenues.

Power to constitute or reconstitute High Court.

206. (1) The Legislature of a State for the time being specified in Part I of the First Schedule may, by law, constitute a High Court for the State or any part thereof or reconstitute in like manner any existing High Court for that State or for any part thereof, or where there are two High Courts in that State, amalgamate those courts.

(2) Where any court is reconstituted, or two courts are amalgamated, as aforesaid, the law made by the Legislature of the State shall provide for—

(a) the continuance in their respective offices of all the existing judges of the court or courts and of such of the existing officers and servants of the court or courts as may be deemed necessary; and

(b) the carrying on before the reconstituted court or the new court of all pending matters;

and may contain such other provision as may appear to be necessary by reason of the reconstitution or amalgamation.

Extension of or exclusion from the jurisdiction of High Courts.

207. Parliament may by law—

(a) extend the jurisdiction of a High Court to, or

(b) exclude the jurisdiction of a High Court from, any State other than, or any area not within, the State in which the High Court has its principal seat:

Provided that no Bill for any such purpose shall be introduced in either House of Parliament unless—

(i) where the jurisdiction is to be extended to or excluded from a State for the time being specified in Part I or Division A of Part III of the First Schedule or any area within such State, the consent of such other State has been obtained; and

(ii) where the jurisdiction is to be extended, the

consent of the State in which the High Court has its principal seat has also been obtained.

208. Where a High Court exercises jurisdiction in relation to any area outside the State in which it has its principal seat, nothing in this Constitution shall be construed—

- (a) as empowering the Legislature of the State in which the court has its principal seat to increase, restrict or abolish that jurisdiction;
- (b) as empowering the Legislature of a State for the time being specified in Part I or Part III of the First Schedule in which any such area is situate, to abolish that jurisdiction; or
- (c) as preventing the Legislature having power to make laws in that behalf of any such area, from passing, subject to the provisions of clause (b) of this article, such laws with respect to the jurisdiction of the court in relation to that area as it would be competent to pass if the principal seat of the court were in that area.

Restrictions on the power of the Legislatures of States to make laws with respect to jurisdiction of a High Court in a State having jurisdiction outside that State.

209. Where a High Court exercises jurisdiction in relation to more than one State or in relation to a State and an area not forming part of the State—

- (a) references in this Chapter to the Governor in relation to the judges of a High Court shall be construed as references to the Governor of the State in which the court has its principal seat;
- (b) the reference to the approval by the Governor of rules, forms and tables for subordinate courts shall be construed as a reference to the approval thereof by the Governor or the Ruler of the State in which the subordinate court is situate, or if it is situate in an area not forming part of any State for the time being specified in Part I or Part III of the First Schedule, by the President; and
- (c) references to the revenues of the State shall be construed as references to the revenues of the State in which the court has its principal seat.

Interpretation.

*Chapter IX—*Auditors-in-Chief for the States*

210. (1) The Legislature of a State for the time being

Auditor-in-Chief for a State.

*The committee is of opinion that the person performing the functions of an Auditor-General in a State should be designated as Auditor-in-Chief to distinguish him from the Auditor-General of India.

specified in Part I of the First Schedule may by law provide for the appointment of an Auditor-in-Chief for the State and when such provision has been made an Auditor-in-Chief for that State may be appointed by the Governor in his discretion and the Auditor-in-Chief so appointed shall only be removed from office in like manner and on the like grounds as a judge of the High Court of the State.

(2) An Act passed under clause (1) of this article by the Legislature of a State shall provide that no appointment of an Auditor-in-Chief for the State shall be made until the expiration of at least three years from the date of the publication after assent of the Act.

(3) Every such Act shall prescribe the conditions of service of the Auditor-in-Chief and the duties which shall be performed and the powers which shall be exercised by the Auditor-in-Chief in relation to the accounts of the State and shall declare the salary, allowances and pension payable to or in respect of the Auditor-in-Chief to be charged on the revenues of the State.

(4) The Auditor-in-Chief of the State shall be eligible for appointment as Auditor-General of India or as Auditor-in-Chief for any other State for the time being specified in Part I of the First Schedule but not for any other appointment either under the Government of India or under the Government of any State after he has ceased to hold his office.

(5) The salaries, allowances and pensions payable to or in respect of members of the staff of the Auditor-in-Chief of a State shall be fixed by the Auditor-in-Chief in consultation with the Governor and shall be charged upon the revenues of the State.

(6) Nothing in this article shall derogate from the power of the Auditor-General of India to give such directions in respect of the accounts of the States for the time being specified in Part I of the First Schedule as are mentioned in article 126 of this Constitution.

Audit reports.

211. The reports of the Auditor-General of India or the Auditor-in-Chief of the State, as the case may be, relating to the accounts of a State for the time being specified in Part I of the First Schedule shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

PART VII

*THE STATES IN PART II OF THE FIRST SCHEDULE

212. (1) Subject to the other provisions of this Part, a State for the time being specified in Part II of the First Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant-Governor to be appointed by him or through the Governor or Ruler of a neighbouring State :

Administration of States in Part II of the First Schedule.

Provided that the President shall not act through the Governor or Ruler of a neighbouring State save after—

- (a) consulting the Governor or Ruler concerned; and
- (b) ascertaining in such manner as the President considers most appropriate the wishes of the people of the State to be so administered.

**(2) Any State for the time being specified in Part III of the First Schedule whose Ruler has ceded full and exclusive authority, jurisdiction and powers for and in relation to the governance of the State to the Government of India shall be administered in all respects as if the State were for the time being specified in Part II of the First Schedule; and, accordingly, all the provisions of this Constitution relating to States specified in the said Part II shall apply to such State.

213. The President may, by order, create or continue for any State for the time being specified in Part II of the First Schedule and administered through a Chief Commissioner or Lieutenant-Governor—

- (a) a local Legislature, or
- (b) a Council of Advisers,

Creation or continuance of local Legislature or Council of Advisers.

*The committee is of opinion that it is not necessary to make any detailed provisions with regard to the Constitution of the States specified in Part II of the First Schedule which are at present Chief Commissioners' Provinces on the lines suggested by the *ad hoc* Committee on Chief Commissioners' Provinces in their recommendations. The revised provisions proposed in this Part would enable the recommendations of the *ad hoc* committee, if adopted by the Constituent Assembly, to be given effect to by the President by order.

**This clause has been inserted by the committee to provide for the administration of States in Part III of the First Schedule (e.g., the Orissa States) which have ceded full and exclusive authority, jurisdiction and powers to the Government of India.

or both, with such constitution, powers and functions, in each case, as may be specified in the order.

Coorg.

214. Until other provision is made in this behalf by the President, the constitution, powers and functions of the Coorg Legislative Council and the arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall remain unchanged.

PART VIII

THE TERRITORIES IN PART IV OF THE FIRST SCHEDULE AND OTHER TERRITORIES NOT SPECIFIED IN THAT SCHEDULE

Administration of territories specified in Part IV of the First Schedule and other territories not specified in that Schedule.

215. (1) Any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or other authority to be appointed by him.

(2) The President may make regulations for the peace and good government of any such territory and any regulation so made may repeal or amend any law made by Parliament or any existing law which is for the time being applicable to such territory and, when promulgated by the President, shall have the same force and effect as an Act of Parliament which applies to such territory.

PART IX

RELATIONS BETWEEN THE UNION AND THE STATES

Chapter I—Legislative Relations Distribution of Legislative Powers

Extent of laws made by Parliament and by the Legislatures of States.

216. (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extraterritorial operation.

Subject-matter

*217. (1) Notwithstanding anything in the two next

*Shri Alladi Krishnaswami Ayyar was of opinion that instead of following the old plan of legislative distribution this clause might, in view of the fact that the residuary power is to be in

succeeding clauses, Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in the next succeeding clause, Parliament and, subject to the preceding clause, the Legislature of any State for the time being specified in Part I of the First Schedule also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

(3) Subject to the two preceding clauses, the Legislature of any State for the time being specified in Part I of the First Schedule has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included for the time being in Part I or Part III of the First Schedule notwithstanding that such matter is a matter enumerated in the State List.

*218. Parliament has the exclusive power to make laws with respect to the constitution, organisation, jurisdiction and powers of the Supreme Court.

219. Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional courts for the better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List.

*220. (1) The Legislature of a State for the time being specified in Part I of the First Schedule has the exclusive power to make laws with respect to the constitution and organisation of any High Court having its principal seat within such State.

(2) Parliament has power to make laws with respect to the constitution and organisation of any High Court having

of laws made by Parliament and by the Legislatures of States.

Legislation with respect to the Supreme Court.

Power of Parliament to provide for the establishment of certain additional courts.

Legislation with respect to constitution and organisation of High Courts.

Parliament, begin with the legislative powers of the State, then deal with the concurrent powers and then with the legislative powers of Parliament. As the question was merely one of form, the majority of the members preferred not to disturb the existing arrangement.

*Some members of the committee consider that articles 218, 220, 221 and 222 are not necessary in view of article 217.

Legislation with respect to jurisdiction and powers of High Courts.

its principal seat in a State for the time being specified in Part II of the First Schedule.

*221. (1) Parliament has the exclusive power to make laws regarding the jurisdiction and powers of any High Court with respect to any of the matters enumerated in the Union List.

(2) The Legislature of a State for the time being specified in Part I of the First Schedule in relation to which or in relation to any area within which a High Court exercises jurisdiction has the exclusive power to make laws regarding the jurisdiction and powers of such High Court in relation to such State or area with respect to any of the matters enumerated in the State List.

(3) Parliament and also the Legislature of a State for the time being specified in Part I of the First Schedule in relation to which or in relation to any area within which a High Court exercises jurisdiction have power to make laws regarding the jurisdiction and powers of such High Court in relation to such State or area with respect to any of the matters enumerated in the Concurrent List.

(4) Parliament has power to make laws regarding the jurisdiction and powers of a High Court in relation to a State for the time being specified in Part II of the First Schedule or any area within such State with respect to any of the matters enumerated in the State List.

Legislation with respect to the procedure to be followed by High Courts in civil and criminal matters.

Residuary power of legislation.

*222. Parliament and also the Legislature of a State for the time being specified in Part I of the First Schedule in which a High Court has its principal seat have power to make laws with respect to the procedure to be followed by such High Court in civil and criminal matters.

223. (1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists.

Restriction of powers of Parliament to make laws with respect to certain matters in relation

*224. Notwithstanding anything in clause (1) of article 217 of this Constitution—

(a) Parliament shall not have power to make laws with respect to any right relating to posts and telegraphs

*Some members of the committee consider that articles 218, 220, 221 and 222 are not necessary in view of article 217.

**The committee is of opinion that some articles of this Chapter will require rearrangement before the Constitution is finally passed by the Constituent Assembly.

in any State or group of States for the time being specified in Part III of the First Schedule subsisting at the date of commencement of this Constitution until such right is extinguished by agreement between the Government of India and that State or group of States or is acquired by the Government of India:

to States in Part III of the First Schedule.

Provided that nothing in this clause shall prevent Parliament from making any law for the regulation and control of posts and telegraphs in such State or group of States;

(b) the power of Parliament to make laws with respect to telephones, wireless, broadcasting and other like forms of communication in any State for the time being specified in Part III of the First Schedule shall extend only to the making of laws for their regulation and control;

(c) the power of Parliament to make laws with respect to corporations shall not include the power to make laws with respect to the incorporation, regulation and winding up of corporations owned or controlled by a State for the time being specified in Part III of the First Schedule and carrying on business only within that State.

225. Notwithstanding anything in this Chapter, the power of Parliament to make laws for a State or a group of States for the time being specified in Part III of the First Schedule shall be subject to the terms of any agreement entered into in that behalf by that State or group of States with the Government of India and the limitations contained therein.

Extent of power to legislate for States in Part III of the First Schedule.

*226. Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter.

Power of Parliament to legislate with respect to a matter in the State List in the national interest.

*The committee is of opinion that power should be provided for Parliament to legislate with respect to any matter in the State List when it assumes national importance, and has inserted this article for the purpose.

Power of Parliament to legislate with respect to any matter in the State List if a Proclamation of Emergency is in operation.

Inconsistency between laws made by Parliament under articles 226 and 227 and laws made by the Legislatures of States.

Power of Parliament to legislate for one or more States by consent and adoption of such legislation by any other States.

227. (1) Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to any of the matters enumerated in the State List.

(2) A law made by Parliament which Parliament would not but for the issue of a Proclamation of Emergency have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of six months after the Proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period.

*228. Nothing in articles 226 and 227 of this Constitution shall restrict the power of the Legislature of a State to make any law which under this Constitution it has power to make, but if any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament has under either of the said articles power to make, the law made by Parliament, whether passed before or after the law made by the Legislature of the State shall prevail, and the law made by the Legislature of the State shall to the extent of the repugnancy, but so long only as the law made by Parliament continues to have effect, be inoperative.

229. (1) If it appears to the Legislature or Legislatures of one or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the State or States except as provided in articles 226 and 227 of this Constitution should be regulated in such State or States by Parliament by law, and a resolution or resolutions to that effect is or are passed by the House or, where there are two Houses, by both the Houses of the Legislature of the State or of each of the States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such State or States and to any other State

*The committee by a majority has decided that when Parliament makes a law with respect to any matter in the State List in the national interest it should be treated as akin to a matter in the Concurrent List, but Shri Alladi Krishnaswami Ayyar is against the retention of power of legislation to the States in such cases as in his opinion the retention of such power would offer a premium for the Union gradually encroaching on the State field and striking at the federal structure of the Constitution.

by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

*(2) Any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State.

**230. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any other country or countries.

231. (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of any existing law regarding a matter with respect to which Parliament has power to make laws, then, subject to the provisions of clause (2) of this article, the law made by Parliament, whether passed before or after the law made by the Legislature of such State or, as the case may be, the existing law shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State for the time being specified in Part I of the First Schedule with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or any existing law with respect to that matter, then the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail :

*The committee is of opinion that an Act passed by Parliament with the consent of the States should not be allowed to be amended or repealed by any Act of the Legislature of any State to which it applies, but should be amended or repealed only by an Act of Parliament passed or adopted in the same manner in which the principal Act was passed or adopted. This is in conformity with the provisions of section 51 (xxxvii) read with section 109 of the Commonwealth of Australia Constitution Act.

**The committee is of opinion that Parliament should have unfettered power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any foreign country or countries.

Legislation for giving effect to international agreements.

Inconsistency between laws made by Parliament and laws made by the Legislatures of States.

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

RESTRICTION ON LEGISLATIVE POWERS

Requirements as to recommendations to be regarded as matters of procedure only.

232. No Act of Parliament or of a Legislature of a State for the time being specified in Part I of the First Schedule and no provision in any such Act shall be invalid by reason only that some recommendation required by this Constitution was not given, if assent to that Act was given—

(a) where the recommendation required was that of the Governor, either by the Governor or by the President;

(b) where the recommendation required was that of the President, by the President.

Chapter II—Administrative Relations

General

Obligation of States and the Union.

233. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for this purpose.

Duty of States not to impede or prejudice authority of the Union.

234. (1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose.

(2) The executive power of the Union shall also extend to the giving of directions to a State as to the construction and maintenance of means of communication declared in the direction to be of national or military importance :

Provided that nothing in this clause shall be taken as restricting the power of Parliament to declare highways or waterways to be national highways or national waterways or the power of the Union with respect to the highways or waterways so declared or the power of the Union to construct and maintain means of communication as part of its functions with respect to naval, military and air force works.

235. (1) Notwithstanding anything in this Constitution, the President may with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.

Power of the Union to confer powers etc. on States in certain cases.

(2) A law made by Parliament which applies in any State may, notwithstanding that it relates to a matter with respect to which the Legislature of the State has no power to make laws, confer powers and impose duties, or authorise the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.

(3) Where by virtue of this article powers and duties have been conferred or imposed upon a State or officers or authorities thereof, there shall be paid by the Government of India to the State such sum as may be agreed or, in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India in respect of any extra costs of administration incurred by the State in connection with the exercise of those powers and duties.

236. (1) The Government of India may by agreement with any State for the time being specified in Part III of the First Schedule, but subject to the provisions of this Constitution in regard to the relationship between the Union and such State, undertake any executive, legislative or judicial functions vested in that State.

Power of the Union to undertake legislative, executive or judicial functions in certain States.

(2) The Government of India may also enter into such an agreement with the Government of any Indian State not specified for the time being in the First Schedule, but every such agreement shall be subject to, and governed by, the law relating to the exercise of foreign jurisdiction for the time being in force.

Explanation: In this clause, the expression "Indian State" means any territory, not being part of the territory of India which the President recognises as being such a State.

(3) If an agreement entered into with any State under clause (1) of this article provides for any matter with respect to which provision has been already made in an agreement entered into with such a State under article 237 of this Constitution by the Government of any State for the time being specified in Part I of the First Schedule, then the latter agreement shall, in so far as it provides for such matter, be deemed to be revoked and of no effect on and from the date of conclusion of the former agreement.

(4) On an agreement under clause (1) of this article being concluded between the Union and a State for the time being specified in Part III of the First Schedule—

- (a) the executive power of the Union shall extend to any matter specified in that behalf in such agreement;
- (b) Parliament shall have power to make laws with respect to any matter specified in that behalf in such agreement; and
- (c) the Supreme Court of India shall, subject to the provisions of clause (2) of article 114 of this Constitution, have jurisdiction with respect to any matter specified in that behalf in such agreement.

Power of States in Part I of the First Schedule to undertake legislative, executive or judicial functions in a State in Part III of the First Schedule.

237. (1) It shall be competent for the Government of a State for the time being specified in Part I of the First Schedule with the previous sanction of the President to undertake, by an agreement made in that behalf with any State for the time being specified in Part III of the First Schedule, any legislative, executive or judicial functions vested in the latter State, if such agreement relates to a matter which is enumerated in the State List or the Concurrent List.

(2) On an agreement under clause (1) of this article being concluded between a State for the time being specified in Part I of the First Schedule and a State for the time being specified in Part III of that Schedule—

- (a) the executive power of the State specified in Part I of the said Schedule shall extend to any matter specified in that behalf in such agreement;
- (b) the Legislature of the State specified in Part I of the said Schedule shall have power to make laws with respect to any matter specified in that behalf in such agreement; and
- (c) the High Court and other appropriate courts in the State specified in Part I of the said Schedule shall have jurisdiction with respect to any matter specified in that behalf in such agreement.

Public acts, records and judicial proceedings.

*238. (1) Full faith and credit shall be given throughout the territory of India to public acts, records and judicial proceedings of the Union and of every State.

*The committee is of opinion that this article should more appropriately be included in this Chapter than in Part III dealing with Fundamental Rights.

The committee is further of opinion that effect ought not to

(2) The manner in which and the conditions under which the acts, records and proceedings referred to in clause (1) of this article shall be proved and the effect thereof determined shall be as provided by law.

(3) Final judgments or orders delivered or passed by civil courts in any part of the territory of India shall be capable of execution anywhere within that territory according to law:

Provided that the provisions of clauses (1) and (3) of this article shall not apply to public acts, records and judicial proceedings of, and the final judgment or order delivered or passed by civil courts in, any State for the time being specified in Part III of the First Schedule unless Parliament has, under the terms of any agreement entered into in that behalf by such State with the Union, power to make laws with respect to the matters enumerated in entries 2, 4 and 5 of the Concurrent List.

Interference with Water Supplies

239. If it appears to the Government of any State for the time being specified in Part I or Part III of the First Schedule that the interests of that State, or of any of the inhabitants thereof, in the water from any natural source of supply in any State have been, or are likely to be affected prejudicially by—

- (a) any executive action or legislation taken or passed, or proposed to be taken or passed; or
- (b) the failure of any authority to exercise any of their powers;

with respect to the use, distribution or control of water from that source, the Government of the State may complain to the President

240. (1) If the President receives such a complaint as aforesaid, he shall, unless he is of opinion that the issues involved are not of sufficient importance to warrant such action, appoint a Commission consisting of such persons having special knowledge and experience in irrigation,

Complaints as to interference with water supplies.

Decision of complaints.

be given to the provisions of this article in relation to every State for the time being specified in Part III of the First Schedule as the laws relating to subjects, such as Civil Procedure, Criminal Procedure and Evidence, enumerated in the Concurrent List may be different in different States. The committee has therefore revised this clause so as to restrict its application only to such of those States as have acceded to the Union in respect of such subjects in the Concurrent List.

engineering, administration, finance or law as he thinks fit, and request that Commission to investigate in accordance with such instructions as he may give to them, and to report to him on the matters to which the complaint relates, or such of those matters as he may refer to them.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) If it appears to the President upon consideration of the Commission's report that anything therein contained requires explanation, or that he needs guidance upon any point not originally referred by him to the Commission, he may again refer the matter to the Commission for further investigation and a further report.

(4) For the purposes of assisting a Commission appointed under this article in investigating any matters referred to them, the Supreme Court, if requested by the Commission so to do, shall make such orders for the purposes of the proceedings of the Commission as they may make in the exercise of the jurisdiction of the court.

(5) The report of the Commission shall include a recommendation as to the Government or persons by whom the expenses of the Commission and any costs incurred by any State or persons in appearing before the Commission are to be paid and as to the amount of any expenses or costs to be so paid; and an order made by the President under this article, in so far as it relates to expenses or costs, may be enforced as if it were an order made by the Supreme Court.

(6) After considering any report made to him by the Commission the President shall, subject as hereinafter provided, make orders in accordance with the report.

(7) If upon consideration of the Commission's report the President is of opinion that anything therein contained involves a substantial question of law he shall refer the question to the Supreme Court under article 119 of this Constitution and on receipt of the opinion of the Supreme Court thereon shall, unless the Supreme Court has agreed with the Commission's report, return the report to the Commission together with the opinion and the Commission shall thereupon make such modifications in the report as may be necessary to bring it in accord with such opinion and present the report as so modified to the President.

(8) Effect shall be given, in any State affected, to any order made under this article by the President, and any Act of the Legislature of a State which is repugnant to the order shall, to the extent of the repugnancy, be void.

(9) The President, on application made to him by the Government of any State affected, may at any time, if a Commission appointed as aforesaid so recommend, vary any order made under this article.

241. If it appears to the President that the interests of any State for the time being specified in Part II of the First Schedule, or of any of the inhabitants of such a State, in the water from any natural source of supply in any State for the time being specified in Part I or Part III of the First Schedule have been or are likely to be affected prejudicially by—

(a) any executive action or legislation taken or passed, or proposed to be taken or passed; or

(b) the failure of any authority to exercise any of their powers;

with respect to the use, distribution or control of water from that source, he may, if he thinks fit, refer the matter to a Commission appointed in accordance with the provisions of the last preceding article and thereupon those provisions shall apply as if the State for the time being specified in Part II of the First Schedule were a State for the time being specified in Part I of that Schedule and as if a complaint with respect to the matter had been made by the Government of that State to the President.

242. Notwithstanding anything in this Constitution, neither the Supreme Court nor any other court shall have jurisdiction to entertain any action or suit in respect of any matter, if action in respect of that matter might have been taken under any of the three last preceding articles by the Government of a State or the President.

Inter-State Trade and Commerce

*243. No preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air.

Interference with water supplies of States in Part II of the First Schedule.

Jurisdiction of courts excluded.

Prohibition of preference or discrimination to one State over another by any law or regulation relating to trade or commerce.

*The committee is of opinion that the provisions contained in articles 243 and 244 should more appropriately be included in this Chapter than in Part III dealing with Fundamental Rights.

Restriction on trade, commerce and intercourse between States.

*244. Notwithstanding anything contained in article 16 or in the last preceding article of this Constitution, it shall be lawful for any State—

(a) to impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse with that State as may be required in the public interests:

Provided that during a period of five years from the commencement of this Constitution the provisions of clause (b) of this article shall not apply to trade or commerce in any of the commodities mentioned in clause (a) of article 306 of this Constitution.

Appointment of authority to carry out the provisions of articles 243 and 244.

†245. Parliament shall by law appoint such authority as it considers appropriate for the carrying out of the provisions of articles 243 and 244 of this Constitution and confer on the authority so appointed such powers and such duties as it thinks necessary.

Coordination between States

Provisions with respect to an inter-State Council.

246. If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of—

(a) inquiring into and advising upon disputes which may have arisen between States;

(b) investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest; or

(c) making recommendations upon any such subject and, in particular, recommendations for the better coordination of policy and action with respect to that subject;

*The committee is of opinion that the provisions contained in articles 243 and 244 should more appropriately be included in this Chapter than in Part III dealing with Fundamental Rights.

†The committee is of opinion that it would be more appropriate to provide for the appointment of an authority by law for the purpose of carrying out the provisions of articles 243 and 244 instead of providing for an inter-State Commission with limited powers as such a Commission, if appointed with powers only to adjudicate disputes as to trade or commerce, may not have sufficient work to do.

it shall be lawful for the President by order to establish such a Council and to define the nature of the duties to be performed by it and its organisation and procedure.

PART X

FINANCE, PROPERTY, CONTRACTS AND SUITS

Chapter I—Finance

*Distribution of revenues between the Union and the States

247. In this Part, unless the context otherwise requires,—

Interpretation.

(a) "Finance Commission" means a Finance Commission constituted under article 260 of this Constitution;

(b) "State" does not include a State for the time being specified in Part II of the First Schedule;

(c) references to States for the time being specified in Part II of the First Schedule shall include references to any territory specified in Part IV of the First Schedule and any other territory comprised within the territory of India but not specified in that Schedule.

248. Subject to the following provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to States, the expression 'revenues of India' includes all revenues and public moneys raised or received by the Government of India and the expression 'revenues of the State' includes all revenues and public moneys raised or received by the Government of a State.

Meaning of "revenues of India" and "revenues of the States".

249. (1) Such stamp duties and such duties of excise on medicinal and toilet preparations are mentioned in the

Duties levied by the Union but collected and

*The committee has not embodied in the Draft the recommendations of the Expert Committee on the Financial Provisions of the Constitution with regard to the distribution of revenues between the Union and the States, as the committee is of opinion that in view of the unstable conditions prevailing at the present moment the existing distribution of such revenues under the Government of India Act, 1935, should continue for at least five years, after which a Finance Commission may review the position. The committee agrees with the Expert Committee that steps should be taken for the collection, compilation and maintenance of statistical information referred to in paragraph 66 of the report of the Expert Committee in order that such information might be available to the Finance Commission when appointed.

*appropriated by
the States.*

Union List shall be levied by the Government of India but shall be collected—

- (a) in the case where such duties are leviable within any State for the time being specified in Part II of the First Schedule, by the Government of India, and
- (b) in other cases, by the States within which such duties are respectively leviable.

(2) The proceeds in any financial year of any such duty leviable in that year within any State shall not form part of the revenues of India, but shall be assigned to that State.

*Taxes levied and
collected by the
Union but
assigned to the
States.*

250. (1) The following duties and taxes shall be levied and collected by the Government of India but shall be assigned to the States in the manner provided in clause (2) of this article, namely :

- (a) duties in respect of succession to property other than agricultural land ;
- (b) estate duty in respect of property other than agricultural land ;
- (c) terminal taxes on goods or passengers carried by railway or air ;
- (d) taxes on railway fares and freights.

(2) The net proceeds in any financial year of any such duty or tax, except in so far as those proceeds represent proceeds attributable to States for the time being specified in Part II of the First Schedule, shall not form part of the revenues of India, but shall be assigned to the States within which that duty or tax is leviable in that year, and shall be distributed among those States in accordance with such principles of distribution as may be formulated by Parliament by law.

*Taxes levied and
collected by the
Union and dis-
tributed be-
tween the Union
and the States.*

251. (1) Taxes on income other than agricultural income shall be levied and collected by the Government of India and distributed between the Union and the States in the manner provided in clause (2) of this article.

(2) Such percentage, as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to States for the time being specified in Part II of the First Schedule or the taxes payable in respect of Union emoluments, shall not form part of the revenues of India, but shall be assigned to the States within which that tax is leviable in that year, and shall be distributed among those States in such manner and from such time as may be prescribed.

(3) For the purposes of clause (2) of this article, in each financial year such percentage as may be prescribed of so much of the net proceeds of taxes on income as does not represent the net proceeds of taxes payable in respect of Union emoluments shall be deemed to represent proceeds attributable to States for the time being specified in Part II of the First Schedule.

(4) In this article—

(a) “taxes on income” includes any sum levied by the Government of India in lieu of any tax on income as referred to in clause (a) of the proviso to article 266 of this Constitution but does not include a corporation tax ;

(b) “prescribed” means—

(i) until a Finance Commission has been constituted, prescribed by the President by order, and

(ii) after a Finance Commission has been constituted, prescribed by the President by order after considering the recommendations of the Finance Commission;

(c) “Union emoluments” includes all emoluments and pensions payable out of the revenues of India in respect of which income-tax is chargeable.

252. Notwithstanding anything contained in articles 250 and 251 of this Constitution, Parliament may at any time increase any of the duties or taxes referred to in those articles by a surcharge for purposes of the Union and the whole proceeds of any such surcharge shall form part of the revenues of India.

*253. (1) No duties on salt shall be levied by the Union.

(2) Union duties of excise other than such duties of excise on medicinal and toilet preparations as are mentioned in the Union List shall be levied and collected by the Government of India, but, if Parliament by law so provides, there shall be paid out of the revenues of India to the States to which the law imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty and those sums shall be distributed among those

Surcharge on certain duties and taxes for purposes of the Union.

Taxes which are levied and collected by the Union and may be distributed between the Union and the States.

*The majority of the members of the committee are of opinion that there should be no constitutional prohibition regarding the duty on salt and its levy should be left to the discretion of Parliament and accordingly clause (1) of this article is not necessary; but Shri Alladi Krishnaswami Ayyar is of opinion that this clause should be retained.

*Distribution of
duty on jute or
jute products.*

States in accordance with such principles of distribution as may be formulated by such law.

254. Notwithstanding anything in article 253 of this Constitution, such proportion, as Parliament may by law determine, of the net proceeds in each year of any export duty on jute or jute-products shall not form part of the revenues of India, but shall be assigned to the States in which jute is grown in accordance with such principles of distribution as may be formulated by such law:

Provided that until Parliament so determine, there shall be assigned to those States out of the net proceeds of the duty in each year such part thereof and in such proportions as may have been fixed in that behalf by any order made under the Government of India Act, 1935, and in force immediately before the commencement of this Constitution.

*Grants from
the Union to
certain States.*

255. Such sums, as Parliament may by law provide, shall be charged on the revenues of India in each year as grants-in-aid of the revenues of such States as Parliament may determine to be in need of assistance, and different sums may be fixed for different States:

Provided that there shall be paid out of the revenues of India as grants-in-aid of the revenues of a State for the time being specified in Part I of the First Schedule such capital and recurring sums as may be necessary to enable that State to meet the costs of such schemes of development as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of the Scheduled Tribes in that State or raising the level of administration of the scheduled areas in that State to that of the administration of the rest of the areas of that State:

Provided further that there shall be paid out of the revenues of India as grants-in-aid of the revenues of the State of Assam sums, capital and recurring, equivalent to—

- (a) the average excess of expenditure over the revenues during the three years immediately preceding the commencement of this Constitution in respect of the administration of the tribal areas specified in Part I of the table appended to paragraph 19 of the Sixth Schedule; and
- (b) the costs of such schemes of development as may be undertaken by that State with the approval of the Government of India for the purpose of raising

the level of administration of the said areas to that of the administration of the rest of the areas of that State.

256. (1) Notwithstanding anything in article 217 of this Constitution but subject to the provisions of clauses (2) and (3) of this article, the Legislature of a State shall have power to make laws with respect to taxes on professions, trades, callings and employments for the benefit of the State or of a municipality, district board, local board or other local authority therein.

Taxes on professions, trades, callings and employments.

(2) The total amount payable in respect of any one person to the State or to any one municipality, district board, local board or other local authority in the State by way of taxes on professions, trades, callings and employments shall not exceed two hundred and fifty rupees per annum :

Provided that, if in the financial year immediately preceding the commencement of this Constitution there was in force in any State or any such municipality, board or authority, a tax on professions, trades, callings or employments, the rate, or the maximum rate, of which exceeded two hundred and fifty rupees per annum, such tax may continue to be levied until provision to the contrary is made by Parliament by law, and any law so made by Parliament may be made either generally or in relation to any specified States, municipalities, boards or authorities.

(3) The power of the Legislature of a State to make laws as aforesaid with respect to taxes on professions, trades, callings and employments shall not be construed as limiting in any way the power of Parliament to make laws with respect to taxes on income accruing from or arising out of professions, trades, callings and employments.

257. Any taxes, duties, cesses or fees which immediately before the commencement of this Constitution, were being lawfully levied by the Government of any State or by any municipality or other local authority or body for the purposes of the State, municipality, district or other local area may, notwithstanding that those taxes, duties, cesses or fees are mentioned in the Union List, continue to be levied and to be applied to the same purposes until provision to the contrary is made by Parliament.

Savings.

258. (1) Notwithstanding anything contained in this Chapter, the Union may, subject to the provisions of clause (2) of this article, enter into an agreement with a State for the time being specified in Part III of the First Schedule

Agreement with States specified in Part III of the First Schedule with regard to the levy.

*collection and
distribution of
taxes and duties.*

with respect to the levy and collection of any tax or duty leviable by the Government of India in such State and for the distribution of the proceeds thereof otherwise than in accordance with the provisions of this Chapter and, when an agreement is so entered into, the provisions of this Chapter shall in relation to such State have effect subject to the terms of such agreement.

(2) An agreement entered into under clause (1) of this article shall continue in force for a period not exceeding ten years from the commencement of this Constitution :

Provided that the President may at any time after the expiration of five years from such commencement terminate or modify any such agreement if after consideration of the report of the Finance Commission he thinks it necessary to do so.

*Calculation of
"net proceeds",
etc.*

259. (1) In the foregoing provisions of this Chapter, "net proceeds" means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of India, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision in this Chapter, a law made by Parliament or an order of the President may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any State, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters.

*Finance Com-
mission.*

260. (1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such other time as the President considers necessary, by order constitute a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President.

(2) Parliament may by law, determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

(3) It shall be the duty of the Commission to make recommendations to the President as to—

- (a) the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them under this Chapter and the allocation between the States of the respective shares of such proceeds ;
- (b) the principles which should govern the grants-in-aid to the States out of the revenues of India ;
- (c) the continuance or modification of the terms of any agreement entered into by the Union with any State for the time being specified in Part III of the First Schedule as respects the levy, collection and distribution of any tax or duty leviable by the Government of India in such State ; and
- (d) any other matter referred to the Commission by the President in the interest of sound finance.

(4) The Commission shall determine their procedure and shall have such powers in the performance of their functions as Parliament may by law confer on them.

261. The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum as to the action taken thereon to be laid before Parliament.

Recommendations of the Finance Commission.

Miscellaneous Financial Provisions

262. The Union or a State may make any grants for any public purpose, notwithstanding that the purpose is not one with respect to which Parliament or the Legislature of the State, as the case may be, may make laws.

Expenditure defrayable out of the revenues of India.

263. (1) Rules may be made by the President and by the Governor of a State for the purpose of securing that all moneys received on account of the revenues of India or of the State, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public accounts of India or of the State, and the rules so made may prescribe, or authorise some person to prescribe, the procedure to be followed in respect of the payment of moneys into the said account, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

Provisions as to the custody of public moneys.

(2) Notwithstanding anything in this article, Parliament may by law regulate the custody of moneys received on account of the revenues of India, their payment into the

public account of India and the withdrawal of moneys from such account, and the Legislature of a State may by law regulate the custody of all moneys received on account of the revenues of the State, their payment into the public account of the State and the withdrawal of moneys from such account, and any rules made under this article shall have effect subject to the provisions of any such law.

Exemption of certain public property from taxation.

264. The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by or by any authority within a State :

Provided that until Parliament, by law, otherwise provides, any property of the Union which was immediately before the commencement of this Constitution liable or treated as liable to any such tax shall, so long as that tax continues, continue to be liable or to be treated as liable thereto.

Exemption from taxes on electricity.

265. Save in so far as Parliament may, by law, otherwise provide, no law of a State shall impose, or authorise the imposition of, a tax on the consumption or sale of electricity (whether produced by Government or other person) which is—

(a) consumed by the Government of India, or sold to the Government of India for consumption by that Government ; or

(b) consumed in the construction, maintenance or operation of a Union railway by the Government or a railway company operating that railway or sold to that Government or any such railway company for consumption in the construction, maintenance or operation of a Union railway;

and any such law imposing, or authorising the imposition of, a tax on the sale of electricity shall secure that the price of electricity sold to the Government of India for consumption by that Government, or to any such railway company as aforesaid for consumption in the construction, maintenance or operation of a Union railway, shall be less by the amount of the tax than the price charged to other consumers of a substantial quantity of electricity.

Exemption of the Governments of States in respect of Union taxation.

266. Subject as hereinafter provided, the Government of a State shall not be liable to Union taxation in respect of lands or buildings situate within the territory of India, or income accruing, arising or received within such territory :

Provided that—

(a) where a trade or business of any kind is carried on

by or on behalf of the Government of a State, nothing in this article shall exempt that Government from any Union tax or the levy of a sum in lieu of such tax in respect of that trade or business or any operations connected therewith, or any income arising in connection therewith, or any property occupied for the purposes thereof ;

- (b) nothing in this article shall exempt the Ruler of any State for the time being specified in Part III of the First Schedule from any Union tax in respect of lands, buildings or income being his personal property or personal income.

Explanation : For the purposes of this article, any operations incidental to the ordinary functions of the Government of a State, such as, the sale of the forest produce of any forest under the control of the Government of a State or of any article produced in any jail within a State, shall not be deemed to be a trade or business carried on by or on behalf of the Government of the State.

267. Where under the provisions of this Constitution the expenses of any court or commission, or pensions payable to or in respect of a person who has served before the commencement of this Constitution under the Crown in India, are charged on the revenues of India or the revenues of a State for the time being specified in Part I of the First Schedule, then if—

Adjustments in respect of certain expenses and pensions.

- (a) in the case of a charge on the revenues of India, the court or commission serves any of the separate needs of a State so specified, or the person has served wholly or in part in connection with the affairs of such a State ; or
- (b) in the case of a charge on the revenues of a State so specified, the court or commission serves any of the separate needs of the Union or another State so specified, or the person has served wholly or in part in connection with the affairs of the Union or another such State ;

there shall be charged on and paid out of the revenues of the State or, as the case may be, the revenues of India or of the other State, such contribution in respect of expenses or pensions as may be agreed, or as may in default of agreement be determined by an arbitrator to be appointed by the Chief Justice of India.

Chapter II—Borrowing

*Borrowing by
the Govern-
ment of India.*

268. The executive power of the Union extends to borrowing upon the security of the revenues of India within such limits, if any, as may from time to time be fixed by Parliament by law and to the giving of guarantees within such limits, if any, as may be so fixed.

*Borrowing by
States.*

269. (1) Subject to the provisions of this article, the executive power of a State for the time being specified in Part I of the First Schedule extends to borrowing within the territory of India upon the security of the revenues of the State within such limits, if any, as may from time to time be fixed by the Legislature of such State by law and to the giving of guarantees within such limits, if any, as may be so fixed.

(2) The Government of India may, subject to such conditions, if any, as it may think fit to impose, make loans to States for the time being specified in Part I or Part III of the First Schedule or so long as any limits fixed under the last preceding article are not exceeded, give guarantees in respect of loans raised by any such State and any sums required for the purpose of making such loans shall be charged on the revenues of India.

(3) A State for the time being specified in Part I or Part III of the First Schedule may not without the consent of the Government of India raise any loan if there is still outstanding any part of a loan which has been made to the State by the Government of India or its predecessor Government or in respect of which a guarantee has been given by the Government of India or by its predecessor Government.

A consent under this clause may be granted subject to such conditions, if any, as the Government of India may think fit to impose.

Chapter III—Property, Contracts, Liabilities and Suits

*Succession to
assets and debts
rights and
liabilities.*

270. As from the commencement of this Constitution, the Government of India and the Government of each State for the time being specified in Part I of the First Schedule shall respectively be the successors of the Government of the Dominion of India and of the corresponding Governors' Provinces as regards all property, assets and liabilities subject to any adjustment made or to be made by reason of the creation before the commencement of this Constitution of the Dominion of Pakistan or of the Provinces of West Bengal, East Bengal, West Punjab and East Punjab.

271. Subject as hereinafter provided, any property in the territory of India except the States for the time being specified in Part III of the First Schedule which, if this Constitution had not come into operation, would have accrued to His Majesty by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State for the time being specified in Part I of the First Schedule, vest in such State for the purposes of the Government of that State, and shall, in any other case, vest in the Union for the purposes of the Government of India :

Property accruing by escheat or lapse or as bona vacantia.

Provided that any property which at the date when it would have so accrued to His Majesty was in the possession or under the control of the Government of India or the Government of a State for the time being specified in Part I of the First Schedule shall, according as the purposes for which it was then used or held were purposes of the Union or of a State so specified, vest in the Union for the purposes of the Government of India or in the State for the purposes of the Government of that State.

272. (1) The executive power of the Union and of each State for the time being specified in Part I of the First Schedule shall extend, subject to any Act of the appropriate Legislature, to the grant, sale, disposition or mortgage of any property held for the purposes of the Union or of such State, as the case may be, and to the purchase or acquisition of property for those purposes respectively, and to the making of contracts.

Power to acquire property.

(2) All property acquired for the purposes of the Union or of a State for the time being specified in Part I of the First Schedule shall vest in the Union or any such State, as the case may be.

273. (1) All contracts made in the exercise of the executive power of the Union or of a State for the time being specified in Part I of the First Schedule shall be expressed to be made by the President, or by the Governor of the State, as the case may be, and all such contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the President or the Governor by such persons and in such manner as he may direct or authorise.

Contracts.

(2) Neither the President, nor the Governor of a State, shall be personally liable in respect of any contract or assurance made or executed for the purposes of this Constitution, or for the purposes of any enactment relating to

the Government of India heretofore in force, nor shall any person making or executing such contract or assurance on behalf of any of them be personally liable in respect thereof.

Suits and proceedings.

274. (1) The Government of India may sue or be sued by the name of the Government of India and the Government of a State for the time being specified in Part I of the First Schedule may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or by the Legislature of such State, enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces might have sued or been sued if this Constitution had not been enacted.

(2) If at the date of commencement of this Constitution—

(a) any legal proceedings are pending to which the Dominion of India is a party, the Government of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province is a party, the corresponding State shall be deemed to be substituted for the Province in those proceedings.

PART XI

EMERGENCY PROVISIONS

Proclamation of Emergency.

275. (1) If the President is satisfied that a grave emergency exists whereby the security of India is threatened, whether by war or domestic violence, he may, by proclamation, make a declaration to that effect.

(2) A proclamation issued under clause (1) of this article (in this Constitution referred to as "a Proclamation of Emergency")—

(a) may be revoked by a subsequent proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of six months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

(3) A Proclamation of Emergency declaring that the security of India is threatened by war or by domestic violence

may be made before the actual occurrence of war or of any such violence if the President is satisfied that there is imminent danger thereof.

276. Where a Proclamation of Emergency is in operation, then, notwithstanding anything contained in this Constitution—

Effect of Proclamation of Emergency.

(a) the executive power of the Union shall extend to the giving of directions to any State as to the manner in which the executive power thereof is to be exercised ;

(b) the power of Parliament to make laws with respect to any matter shall include power to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter.

277. The President may, while a Proclamation of Emergency is in operation, by order, direct that all or any of the provisions of articles 249 to 259 of this Constitution shall for such period, not extending in any case beyond the expiration of the financial year in which such proclamation ceases to operate, as may be specified in the order, have effect subject to such exceptions or modifications as he thinks fit.

Application of provisions relating to distribution of revenues during the period of Proclamation of Emergency is in operation.

278. (1) If the President, on receipt of a proclamation issued by the Governor of a State under article 188 of this Constitution, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, he may by proclamation—

Provisions in case of failure of constitutional machinery in States in Part I of the First Schedule.

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or any body or authority in the State other than the Legislature of the State ;

(b) declare that the powers of the Legislature of the State shall be exercisable only by Parliament ;

and any such proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in that State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend, either in whole or in part, the operation of any provision of this Constitution relating to High Courts.

(2) Any such proclamation may be revoked or varied by a subsequent proclamation.

(3) A proclamation under this article—

- (a) shall be laid before each House of Parliament;
- (b) except where it is a proclamation revoking a previous proclamation, shall cease to operate at the expiration of six months:

Provided that, if and so often as a resolution approving the continuance in force of such a proclamation is passed by both Houses of Parliament, the proclamation shall, unless revoked, continue in force for a further period of twelve months from the date on which under this clause it would otherwise have ceased to operate, but no such proclamation shall in any case remain in force for more than three years.

(4) Where by a proclamation issued under clause (1) of this article it has been declared that the powers of the Legislature of the State shall be exercisable only by Parliament, it shall be competent—

- (a) for Parliament to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Government of India or officers and authorities of the Government of India;
- (b) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.

(5) Any law made by Parliament which Parliament would not but for the issue of a proclamation under this article have been competent to make shall to the extent of the incompetency cease to have effect on the expiration of a period of one year after the proclamation has ceased to operate, except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the Legislature of the State.

*Suspension of
provisions of
article 13 during*

279. While a Proclamation of Emergency is in operation, nothing in article 13 of Part III of this Constitution shall

restrict the power of the State as defined in that Part to make any law or to take any executive action which the State would otherwise be competent to make or to take.

emergencies.

*280. Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order.

Suspension of the rights guaranteed by article 25 of this Constitution during emergencies.

PART XII

SERVICES UNDER THE UNION AND THE STATES

Chapter I—†Services

281. In this Part, unless the context otherwise requires, the expression "State" means a State for the time being specified in Part I of the First Schedule.

Interpretation.

282. (1) Subject to the provisions of clause (2) of this article, Acts of the appropriate Legislature may regulate the recruitment and the conditions of service of persons appointed to public services, and to posts in connection with the affairs of the Union or any State.

Recruitment and conditions of service of persons serving the Union or a State.

(2) No person who is a member of any civil service or holds any civil post in connection with the affairs of the Government of India or the Government of a State shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided that this clause shall not apply—

- (a) where a person is dismissed, removed, or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ; or

*The committee is of opinion that no provision should be made for suspension of the fundamental rights under article 13 or for suspension of the enforcement of such rights under article 25 where an emergency is declared by the Government of a State for the time being specified in Part III of the First Schedule as it will create unnecessary complications.

†The committee is of opinion that detailed provisions with regard to recruitment and conditions of service of persons in Defence Services or serving the Union or a State in a civil capacity should not be included in the Constitution but should be left to be regulated by Acts of the appropriate Legislature.

(b) where an authority empowered to dismiss a person or remove him or reduce him in rank is satisfied that for some reason to be recorded by that authority in writing it is not reasonably practicable to give that person an opportunity of showing cause.

Transitional provisions.

283. Until other provision is made in this behalf under this Constitution, any rules which were in force immediately before the commencement of this Constitution and were applicable to any public service or any post which has continued to exist after the commencement of this Constitution as a service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution.

Chapter II—Public Service Commissions

Public Service Commissions for the Union and for the States.

284. (1) Subject to the provisions of this article there shall be a Public Service Commission for the Union and a Public Service Commission for each State.

(2) Two or more States may agree—

(a) that there shall be one Public Service Commission for that group of States; or

(b) that the Public Service Commission for one of the States shall serve the needs of all the States;

and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of States, specify by what Governor or Governors the functions which are under this Part of this Constitution to be discharged by the Governor of a State are to be discharged.

(3) The Public Service Commission for the Union if requested so to do by the Governor of a State may, with the approval of the President, agree to serve all or any of the needs of the State.

(4) References in this Constitution to the Union Public Service Commission or a State Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Union, or, as the case may be, the State as respects the particular matter in question.

Composition and staff of Commissions.

285. (1) The Chairman and other members of a Public Service Commission shall be appointed, in the case of the Union Commission, by the President, and in the case of

a State Commission, by the Governor of the State in his discretion :

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years either under the Government of India or under the Government of a State and in computing the said period of ten years any period before the commencement of this Constitution during which a person has held office under the Crown shall be included.

(2) In the case of the Union Commission, the President and, in the case of a State Commission, the Governor of the State in his discretion, may by regulations—

- (a) determine the number of members of the Commission, their tenure of office and their conditions of service; and
 - (b) make provision with respect to the number of members of the staff of the Commission and their conditions of service.
- (3) On ceasing to hold office—
- (a) the Chairman of the Union Commission shall be ineligible for further employment either under the Government of India or under the Government of a State;
 - (b) the Chairman of a State Commission shall be eligible for appointment as the Chairman or a member of the Union Commission or as the Chairman of another State Commission, but not for any other employment either under the Government of India or under the Government of a State;
 - (c) no other member of the Union or of any State Commission shall be eligible for any other appointment either under the Government of India or the Government of a State without the approval in the case of an appointment in connection with the affairs of a State, of the Governor of the State and, in the case of any other appointment, of the President.

286. (1) It shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively.

(2) It shall also be the duty of the Union Public Service Commission, if requested by any two or more States so to

*Functions of
Public Service
Commissions.*

do, to assist those States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.

(3) The President as respects the All India Services and also as respects other services and posts in connection with the affairs of the Union, and the Governor as respects other services and posts in connection with the affairs of a State, may make regulations specifying the matters in which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted, but, subject to regulations so made and to the provisions of the next succeeding clause, the Union Commission or, as the case may be, the State Commission shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- (c) on all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity, including memorials or petitions relating to such matters;
- (d) on any claim by or in respect of a person who is serving or has served under the Government of India or the Government of a State or under the Crown, in a civil capacity that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of India or, as the case may be, the State;
- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown in a civil capacity, and any question as to the amount of any such award;

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President or, as the case may be, the Governor may refer to them.

(4) Nothing in this article shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Union or a State.

287. Subject to the provisions of this article, an Act made by Parliament or by the Legislature of the State may provide for the exercise of additional functions by the Union Public Service Commission, or, as the case may be, by the State Public Service Commission :

Power to extend functions of Public Service Commissions.

Provided that where the Act is made by the Legislature of a State, it shall be a term of such Act that the functions conferred by it shall not be exercisable in relation to any person who is not a member of one of the services of the State except with the consent of the President.

288. The expenses of the Union or a State Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of India or, as the case may be, the State.

Expenses of Public Service Commissions.

PART XIII

ELECTIONS

289. (1) The superintendence, direction and control of all elections to Parliament and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with the elections to Parliament, shall be vested in a Commission to be appointed by the President.

Superintendence, direction and control of elections to be vested in an Election Commission.

(2) The superintendence, direction and control of all elections to the Legislature of a State for the time being specified in Part I of the First Schedule and of elections to the office of Governor of the State *elections to constitute a panel for the purpose of the appointment of a Governor of the State held under this Constitution including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections

*The words "elections to constitute a panel for the purpose of the appointment of a Governor of the State" will have to be used in this clause in place of the words "elections to the office of Governor of the State" if the second alternative is adopted in article 131.

to the Legislature of such State shall be vested in a Commission to be appointed by the Governor of the State.*

Elections to Parliament.

290. Subject to the provisions of this Constitution, Parliament may, from time to time, by law, make provision with respect to all matters relating to or in connection with elections to either House of Parliament including matters necessary for securing the due constitution of the two Houses of Parliament and the delimitation of constituencies.

Elections to the Legislatures of States.

291. Subject to the provisions of this Constitution, the Legislature of a State for the time being specified in Part I of the First Schedule may, from time to time, by law, make provision with respect to all matters relating to or in connection with elections to the House or Houses of the Legislature of the State including matters necessary for securing the due constitution of such House or Houses and the delimitation of constituencies.

PART XIV

SPECIAL PROVISIONS RELATING TO MINORITIES

Reservation of seats for minorities in the House of the People.

292. Seats shall be reserved in the House of the People for—

- (a) the Muslim community and the Scheduled Castes;
- (b) the Scheduled Tribes in every State for the time being specified in Part I of the First Schedule ; and
- (c) the Indian Christian community in the States of Madras and Bombay,

according to the scale prescribed in sub-clause (b) of clause (5) of article 67 of this Constitution.

Special provisions regarding the representation of the Anglo-Indian community in the House of the People.

293. Notwithstanding anything contained in article 67 of this Constitution, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of the community to the House of the People.

Reservation of seats for minorities in the Legislative Assemblies of the States.

294. (1) Seats shall be reserved for—

- (a) the Muslim community, the Scheduled Castes and the Scheduled Tribes (except the Scheduled Tribes in the autonomous districts of Assam) in the Legislative

*The committee is of opinion that the Election Commission to superintend, direct and control elections to the Legislature of a State in Part I of the First Schedule should be appointed by the Governor of the State.

Assembly of every State for the time being specified in Part I of the First Schedule; and

(b) the Indian Christian community in the Legislative Assemblies of the States of Madras and Bombay; according to the scale prescribed in clause (3) of article 149 of this Constitution.

(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

(3) The number of seats reserved for any community in the Legislative Assembly of any State for the time being specified in Part I of the First Schedule shall bear, as nearly as may be, the same proportion to the total number of seats in that Assembly as the population of the community in the State bears to the total population of the State.

Explanation: All the Scheduled Castes in a State shall be deemed to be a single community for the purposes of this clause and so also all the Scheduled Tribes in a State.

(4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.

(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district.

(6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district *[except from the constituency comprising the cantonment and municipality of Shillong].

295. Notwithstanding anything contained in article 149 of this Constitution, the Governor of a State may, if he is of opinion that the Anglo-Indian community is not adequately represented in the Legislative Assembly of the State, nominate such number of members of the community to the Legislative Assembly as he considers appropriate.

296. Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken

Special provisions regarding the representation of the Anglo-Indian community in the Legislative Assemblies of the States. Claims of minority communities to

*The words within square brackets should be deleted if the words 'excluding the town of Shillong' is retained in item 1 of Part I of the table appended to paragraph 19 of the Sixth Schedule to the Constitution.

services and posts.

Special provision for Anglo-Indian community in certain services.

Special provision with respect to educational grants for the benefit of Anglo-Indian community.

into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Part I of the First Schedule.

297. (1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years :

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

(2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such members are found qualified for appointment on merit as compared with the members of other communities.

298. During the first three financial years after the commencement of this Constitution, the same grants, if any, shall be made by the Union and by each State for the time being specified in Part I of the First Schedule for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the 31st day of March 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years :

Provided that at the end of ten years from the commencement of this Constitution, such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease :

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

299. (1) There shall be a Special Officer for minorities for the Union who shall be appointed by the President, and a Special Officer for minorities for each State for the time being specified in Part I of the First Schedule who shall be appointed by the Governor of the State.

*Special Officers
for minorities
for the Union
and the States.*

(2) It shall be the duty of the Special Officer for the Union to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the Union and to report to the President upon the working of the safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before Parliament.

(3) It shall be the duty of the Special Officer for a State so specified to investigate all matters relating to the safeguards provided for minorities under this Constitution in connection with the affairs of the State and to report to the Governor of the State upon the working of the safeguards at such intervals as the Governor may direct and the Governor shall cause all such reports to be laid before the Legislature of the State.

300. (1) The President may at any time and shall, on the expiration of ten years from the commencement of this Constitution, by order, appoint a Commission to report on the administration of the scheduled areas and the welfare of the Scheduled Tribes in the States for the time being specified in Part I of the First Schedule.

*Control of the
Union over the
administration
of scheduled
areas and wel-
fare of Schedul-
ed Tribes in
States in Part
I of the First
Schedule.*

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

(2) The executive power of the Union shall extend to the giving of directions to such a State as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

301. (1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be given for the purpose by the Union or any State and the

*Appointment of
a Commission
to investigate
the conditions
of backward
classes.*

conditions subject to which such grants should be given, and the order appointing such Commission shall define the procedure to be followed by the Commission.

(2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.

(3) The President shall cause a copy of the report so presented, together with a memorandum explaining the action taken thereon to be laid before Parliament.

PART XV

MISCELLANEOUS

Protection of President and Governors.

302. (1) The President or the Governor of a State shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties :

Provided that the conduct of the President may be brought under review by any court, tribunal or body appointed or designated by either House of Parliament for the investigation of a charge under article 50 of this Constitution :

Provided further that nothing in this clause shall be construed as restricting the right of any person to bring against the Government of India or the Government of a State such proceedings as are mentioned in Chapter III of Part X of this Constitution.

(2) No criminal proceedings whatsoever shall be instituted or continued against the President or the Governor of a State in any court during his term of office.

(3) No process for the arrest or imprisonment of the President or the Governor of a State shall issue from any court during his term of office.

(4) No civil proceedings in which relief is claimed against the President or the Governor of a State shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President or Governor of such State, until the expiration of two months next after notice in writing has been delivered to the President or the Governor, as the

case may be, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

303. (1) In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

Interpretation.

- (a) "agricultural income" means agricultural income as defined for the purposes of the enactments relating to Indian income-tax;
- (b) "an Anglo-Indian" means a person whose father or any of whose other male progenitors in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only;
- (c) "an Indian Christian" means a person who professes any form of the Christian religion and is not a European or an Anglo-Indian;
- (d) "borrow" includes the raising of money by the grant of annuities, and "loan" shall be construed accordingly;
- (e) "Chief Justice" includes in relation to a High Court a Chief Judge;
- (f) "corporation tax" means any tax on income, so far as that tax is payable by companies and is a tax in the case of which the following conditions are fulfilled :
 - (i) that it is not chargeable in respect of agricultural income;
 - (ii) that no deduction in respect of the tax paid by companies is, by any enactments which may apply to the tax, authorised to be made from dividends payable by the companies to individuals;
 - (iii) that no provision exists for taking the tax so paid into account in computing for the purposes of Indian income-tax the total income of individuals receiving such dividends, or in computing the Indian income-tax payable by, or refundable to, such individuals;
- (g) "corresponding Province" or "corresponding State"

means in cases of doubt such Province or State as may be determined by the President to be the corresponding Province or, as the case may be, the corresponding State for the particular purpose in question ;

- (h) "debt" includes any liability in respect of any obligation to repay capital sums by way of annuities and any liability under any guarantee, and "debt charges" shall be construed accordingly ;
- (i) "existing law" means any law, Ordinance, order, bye-law, rule or regulation passed or made before the commencement of this Constitution by any legislature, authority or person having power to make such a law, Ordinance, order, bye-law, rule or regulation but does not include any Act of Parliament of the United Kingdom or any Order in Council made under any such Act;
- (j) "Federal Court" means the Federal Court constituted under the Government of India Act, 1935 ;
- (k) "goods" includes all materials, commodities, and articles ;
- (l) "guarantee" includes any obligation undertaken before the commencement of this Constitution to make payments in the event of the profits of an undertaking falling short of a specified amount ;
- (m) "pension" means a pension, whether contributory or not, of any kind whatsoever payable to or in respect of any person, and includes retired pay so payable, a gratuity so payable and any sum or sums so payable by way of the return, with or without interest thereon or any other addition thereto, of subscriptions to a provident fund ;
- (n) "public notification" means a notification in the Gazette of India, or as the case may be, the Official Gazette of a State ;
- (o) "securities" includes stock ;
- (p) "taxation" includes the imposition of any tax or impost, whether general or local or special, and "tax" shall be construed accordingly ;
- (q) "tax on income" includes a tax in the nature of an excess profits tax ;
- (r) "railway" includes a tramway not wholly within a municipal area ;
- (s) "Union railway" does not include an Indian State

railway but, save as aforesaid, includes any railway not being a minor railway ;

- (t) "Indian State railway" means a railway owned by a State for the time being specified in Part III of the First Schedule and either operated by such State, or operated on behalf of such State otherwise than in accordance with a contract made with that State by or on behalf of the Government of India, or any company operating a Union railway ;
- (u) "minor railway" means a railway which is wholly situate in one State and does not form a continuous line of communication with a Union railway, whether of the same gauge or not ;
- (v) "Schedule" means a Schedule to this Constitution ;
- (w) "Scheduled Castes" means in relation to any State for the time being specified in Part I of the First Schedule such castes, races or tribes or parts of or groups within castes, races or tribes as are specified in the Government of India (Scheduled Castes) Order, 1936, to be Scheduled Castes for the purposes of the Fifth and Sixth Schedules to the Government of India Act, 1935, in relation to the corresponding Province ;
- (x) "Scheduled Tribes" means the tribes or communities specified in Parts I to IX of the Eighth Schedule in relation to the States for the time being specified in Part I of the First Schedule to which those Parts respectively relate.

(2) Unless the context otherwise requires, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution.

(3) Any reference in this Constitution to Acts or laws of, or made by, Parliament or Acts or laws of, or made by, the Legislature of a State for the time being specified in Part I of the First Schedule shall be construed as including a reference to an Ordinance made by the President or, as the case may be, to an Ordinance made by a Governor.

PART XVI

AMENDMENT OF THE CONSTITUTION

304. (1) An amendment of the Constitution may be initiated by the introduction of a Bill for the purpose in either

Procedure for amendment of

*the Constitu-
tion.*

House of Parliament and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill :

Provided that if such amendment seeks to make any change in—

*(a) any of the lists in the Seventh Schedule;

(b) the representation of States in Parliament ; or

(c) the powers of the Supreme Court;

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States for the time being specified in Part I of the First Schedule and the Legislatures of not less than one-third of the States for the time being specified in Part III of that Schedule.

** (2) Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the ***method of choosing a Governor or the number of Houses of the Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose in the Legislative Assembly of the State or, where the State has a Legislative Council, in either House of the Legislature of the State, and when the Bill is passed by the Legislative Assembly or, where the State has a Legislative Council, by both Houses of the Legislature of the State, by a majority of the total membership of the Assembly or each House,

*The committee is of opinion that item (a) of the proviso to clause (1) of this article should contain reference to all the lists in the Seventh Schedule.

**The committee is also of opinion that provision should be included in this article for enabling the Legislature of a State in Part I of the First Schedule to initiate a Bill for the amendment of the provisions of this Constitution relating to the choosing of the Governor and the number of Houses of the Legislature in such State provided such Bill is passed by an absolute majority of the Legislature of such State and is thereafter ratified by Parliament by an absolute majority, and has added clause (2) to this article for the purpose.

***The words "the method of choosing a Governor or" should be retained in this clause only if the second alternative in article 131 is not adopted.

as the case may be, it shall be submitted to Parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House it shall be presented to the President for assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill.

Explanation : Where a group of States is for the time being specified in Part III of the First Schedule, the entire group shall be deemed to be a single State for the purposes of the proviso to clause (1) of this article.

305. Notwithstanding anything contained in article 304 of this Constitution, the provisions of this Constitution relating to the reservation of seats for the Muslims, the Scheduled Castes, the Scheduled Tribes or the Indian Christians either in Parliament or in the Legislature of any State for the time being specified in Part I of the First Schedule shall not be amended during a period of ten years from the commencement of this Constitution and shall cease to have effect on the expiration of that period unless continued in operation by an amendment of the Constitution.

Reservation of seats for minorities to remain in force for only ten years unless continued in operation by amendment of the Constitution.

PART XVII

TEMPORARY AND TRANSITIONAL PROVISIONS

*306. Notwithstanding anything in this Constitution, Parliament shall, during a period of five years from the commencement of this Constitution, have power to make laws with respect to the following matters as if they were enumerated in the Concurrent List, namely :

- (a) trade and commerce within a State in, and the production, supply and distribution of, cotton and woollen textiles, paper (including newsprint), foodstuffs (including edible oil-seeds and oil), petroleum and petroleum products, spare parts of mechanically propelled vehicles, coal, iron, steel and mica ;

Temporary power to Parliament to make laws with respect to certain matters in the State List as if they were matters in the Concurrent List.

*The committee is of opinion that in view of the present conditions regarding the production, supply and distribution of foodstuffs and certain other commodities and the special problem of the relief and rehabilitation of refugees, power should be provided for Parliament to make laws with respect to these matters for a period of five years, although normally these matters fall in the State List. Similar power was conferred for a limited period by the India (Central Government and Legislature) Act, 1946.

- (b) relief and rehabilitation of displaced persons ;
- (c) offences against laws with respect to any of the matters mentioned in clauses (a) and (b) of this article, inquiries and statistics for the purposes of any of those matters, jurisdiction and powers of all courts except the Supreme Court with respect to any of those matters, and fees in respect of any of those matters but not including fees taken in any court ;

but any law made by Parliament, which Parliament would not but for the provisions of this article have been competent to make, shall to the extent of the incompetency cease to have effect on the expiration of the said period except as respects things done or omitted to be done before the expiration thereof.

Continuance in force of existing laws and their adaptation.

307. (1) Subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

(2) The President may, by order, provide that, as from such date as may be specified in the order, any law in force in the territory of India or in any part of such territory shall, until repealed or amended by a competent Legislature or other competent authority, have effect subject to such adaptations and modifications, whether by way of repeal or amendment, as appear to him to be necessary or expedient for bringing the provisions of that law into accord with the provisions of this Constitution and any such adaptation or modification shall not be questioned in any court of law.

Explanation I : The expression "law in force" in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas.

Explanation II : Any law passed or made by a Legislature or other competent authority in the territory of India which immediately before the commencement of this Constitution had extra-territorial effect as well as effect in the territory of India shall, subject to any such adaptations and modifications as aforesaid, continue to have extra-territorial effect.

Explanation III : Nothing in this article shall be construed as continuing any temporary Act in force beyond the date fixed for its expiration.

308. (1) The judges of the Federal Court holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the Supreme Court and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 104 of this Constitution in respect of the judges of the Supreme Court.

Judges of the Federal Court to become judges of the Supreme Court and proceedings pending in the Federal Court or before His Majesty in Council to be transferred to the Supreme Court.

(2) All suits, appeals and proceedings, civil or criminal, pending in the Federal Court at the commencement of this Constitution shall stand removed to the Supreme Court, and the Supreme Court shall have jurisdiction to hear and determine the same and the judgments and orders of the Federal Court delivered or made before the commencement of this Constitution shall have the same force and effect as if they had been delivered or made by the Supreme Court.

*(3) On and from the date of commencement of this Constitution the jurisdiction of His Majesty in Council to entertain and dispose of appeals and petitions from or in respect of any decree or order of any court within the territory of India including the jurisdiction in respect of criminal matters exercisable by His Majesty by virtue of His Majesty's prerogative shall cease, and all appeals and other proceedings pending before His Majesty in Council on the said date shall be transferred to, and disposed of, by the Supreme Court.

(4) Further provision may be made by Parliament by law to give effect to the provisions of this article.

309. All courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of India shall continue to

Courts, authorities and officers to continue to function after the commencement of this Constitution

*The committee thinks that all appeals and other proceedings pending before His Majesty-in-Council shall be finally disposed of by the time the Constitution comes into operation. If, however, some appeals or other proceedings remain pending before His Majesty-in-Council at the time of the commencement of the Constitution and any difficulty is experienced with regard to their transfer to, or disposal by, the Supreme Court, the President may pass necessary orders under the "removal of difficulties" clause (article 313).

subject to the provisions thereof.
Provisions as to judges of High Courts.

Provisions as to provisional Legislature of the Union, President, etc.

exercise their respective functions subject to the provisions of this Constitution.

310. The judges of a High Court in any Province holding office immediately before the date of commencement of this Constitution shall, unless they have elected otherwise, become on that date the judges of the High Court in the corresponding State, and shall thereupon be entitled to such salaries and allowances and to such rights in respect of leave and pensions as are provided for under article 197 of this Constitution in respect of the judges of such High Court.

311. (1) Until both Houses of Parliament have been duly constituted and summoned to meet for the first session under this Constitution, the Constituent Assembly of the Dominion of India shall itself exercise all the powers and perform all the duties conferred on Parliament and may in particular make law for securing the due constitution of the two Houses of Parliament and for providing for all matters relating to or connected with elections to either House of Parliament including the delimitation of constituencies and for such other ancillary and consequential matters as may be deemed necessary for the purpose of giving effect to the provisions of this Constitution.

Explanation: For the purposes of this clause, the Constituent Assembly of the Dominion of India includes members chosen to fill casual vacancies in that Assembly in accordance with rules made in that behalf by the Assembly, but shall not include any members representing any territory not included in the First Schedule.

(2) The Speaker of the Constituent Assembly when functioning as the Dominion Legislature under the Government of India Act, 1935, shall continue to be the Speaker of such Assembly functioning under clause (1) of this article.

*(3) Such person as the Constituent Assembly of the Dominion of India shall have elected in this behalf shall

*Two members of the committee, the Honourable Dr. B. R. Ambedkar and Shri Alladi Krishnaswami Ayyar, are of opinion that for clause (3) of article 311, the following clause should be substituted:

"(3) The President of the Constituent Assembly of India shall become the provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office."

be the provisional President of India until a President has been elected in accordance with the provisions contained in Chapter I of Part V of this Constitution and has entered upon his office.

(4) All persons holding office as Ministers for the Dominion of India immediately before the commencement of this Constitution shall after such commencement become members of the Council of Ministers of the provisional President under this Constitution.

312. (1) Until the House or Houses of the Legislature of each State for the time being specified in Part I of the First Schedule has or have been duly constituted and summoned to meet for the first session under the provisions of this Constitution, the House or Houses of the Legislature of the corresponding Province functioning immediately before the commencement of this Constitution shall exercise the powers and perform the duties conferred by the provisions of this Constitution on the House or Houses of the Legislature of such State.

Provisions as to provisional Legislature, Governor, etc. in each State in Part I of the First Schedule.

(2) Any person holding office as Speaker of the Legislative Assembly or President of the Legislative Council of a Province immediately before the commencement of this Constitution shall after such commencement be the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, of the corresponding State for the time being specified in Part I of the First Schedule while such Assembly or Council functions under clause (1) of this article.

(3) Any person holding office as Governor in any Province immediately before the commencement of this Constitution shall after such commencement be the provisional Governor of the corresponding State for the time being specified in Part I of the First Schedule until a new Governor has been elected/appointed* in accordance with the provisions of Chapter II of Part VI of this Constitution and has entered upon his office.

(4) All persons holding office as Ministers in a Province immediately before the commencement of this Constitution shall after such commencement become members of the Council of Ministers of the provisional Governor of the

*If the second alternative is adopted in article 131, the word "appointed" will have to be used in this clause instead of the word "elected".

corresponding State for the time being specified in Part I of the First Schedule.

Power of the President to remove difficulties.

313. (1) Subject to the provisions of clause (1) of article 311 of this Constitution, the President may, for the purpose of removing any difficulties, particularly in relation to the transition from the provisions of the Government of India Act, 1935, to the provisions of this Constitution, by order, direct that this Constitution shall, during such period as may be specified in the order, have effect subject to such adaptations, whether by way of variation, addition, or repeal, as he may deem to be necessary or expedient :

Provided that no such order shall be made after the first meeting of Parliament duly constituted under Chapter II of Part V of this Constitution.

(2) Every order made under clause (1) of this article shall be laid before each House of Parliament.

PART XVIII

COMMENCEMENT AND REPEALS

Commencement.

314. This Constitution shall come into force on

Repeals.

315. The Indian Independence Act, 1947, and the Government of India Act, 1935, including the India (Central Government and Legislature) Act, 1946, and all other enactments amending or supplementing the Government of India Act, 1935, shall cease to have effect.

FIRST SCHEDULE

[Articles 1 and 4]

THE STATES AND THE TERRITORIES OF INDIA

*PART I

The territories known immediately before the commencement of this Constitution as the Governors' Provinces of—

1. Madras,

*The committee has anxiously considered the question whether Andhra should be specifically mentioned as a separate State in this Schedule. There was recently a statement by the Government on this subject, in which it was said that Andhra could be included among the Provinces in the Constitution as was done in the case of Orissa and Sind under the Government of India Act, 1935. Accordingly the committee was at one stage inclined to mention Andhra as a distinct State in the Schedule. On fuller consideration, however, the committee feels that the bare mention of the

2. Bombay,
3. West Bengal,
4. The United Provinces,
5. Bihar,
6. East Punjab,
7. The Central Provinces and Berar,
8. Assam,
9. Orissa.

PART II

The territories known immediately before the commencement of this Constitution as the Chief Commissioners' Provinces of—

1. Delhi,
2. Ajmer-Merwara including Panth Piploda,
3. Coorg.

PART III

Division A

The following Indian States—

1. Mysore,
2. Kashmir,
3. Gwalior,
4. Baroda,
5. Travancore,
6. Cochin,
7. Udaipur,
8. Jaipur,
9. Jodhpur,
10. Bikaner,
11. Alwar,
12. Kotah,
13. Indore.
14. Bhopal,
15. Rewa.
16. Kolhapur,
17. Patiala,
18. Mayurbhanj,
19. United State of Kathiawar.

State in the Schedule will not suffice to bring it into being from the commencement of the new Constitution. Preparatory steps will have to be taken immediately under the present Constitution in order that the new State, with all the machinery of government, may be in being from the commencement of the new Constitution. This was what was done in the case of Orissa and Sind under the Act of 1935; they were made into separate Provinces with effect from April 1, 1936, while the Act came into operation on April 1, 1937. The committee therefore recommends that a Commission should be appointed to work out or inquire into all relevant matters not only as regards Andhra but also as regards other linguistic regions, with instructions to submit its report in time to enable any new States whose formation it may recommend to be created under section 290 of the Act of 1935 and to be mentioned in this Schedule before the Constitution is finally adopted.

*Division B**

All other Indian States which were within the Dominion of India immediately before the commencement of this Constitution.

PART IV

The Andaman and Nicobar Islands.

SECOND SCHEDULE

[Articles 48 (3), 62 (6), 79, 104, 124 (2), 135 (3), 145 (5), 163 and 197]

PART I—PROVISIONS AS TO THE PRESIDENT AND THE GOVERNORS OF STATES FOR THE TIME BEING SPECIFIED IN PART I OF THE FIRST SCHEDULE

1. There shall be paid to the President and to the Governors of the States for the time being specified in Part I of the First Schedule the following emoluments per mensem, that is to say:

The President	...	5,500 rupees.
The Governor of a State	...	4,500 rupees.

2. There shall be also paid to the President and to the Governors the following allowances per mensem during their respective terms of offices to enable them to discharge conveniently and with dignity the duties of their respective offices, that is to say:

The President	...	_____ rupees.
The Governor of a State	...	_____ rupees.

3. There shall be paid to the President and a Governor an allowance equal to the actual expenses respectively incurred by them in travelling with their families, if any, and their and their families' effects to take up the appointment of the President or Governor as the case may be.

4. The President and each Governor throughout their respective terms of office shall be entitled without payment of rent or hire to the use of the official residences and the railway saloons, river craft, air craft and motor cars provided for their respective use and no charge shall fall on them personally in respect of the maintenance thereof.

5. While the Vice-President or any other person is discharging the functions of the, or is acting as, President, or any person is discharging the functions of the Governor, he shall be entitled to the same emolument and allowance under paragraphs 1 and 2 of this Schedule as the President or the Governor whose functions he discharges or for whom he acts, as the case may be, and during the period he so discharges the functions or acts, the provisions of paragraph 4 of this Schedule shall apply to him, but the provisions of paragraph 3 thereof shall not apply to him.

PART II—PROVISIONS AS TO THE MINISTERS FOR THE UNION AND FOR THE STATES IN PART I OF THE FIRST SCHEDULE

6. There shall be paid to the Prime Minister and to each of the other Ministers for the Union such salaries and allowances as were payable respectively to the Prime Minister and to each of other Ministers for the Dominion immediately before the commencement of this Constitution.

*It is not possible to enumerate each of the States because owing to the mergers of various kinds many of the States may disappear in larger units. It will be necessary however to enumerate all the States by name before the Constitution is finally adopted.

7. There shall be paid to the Ministers for any State for the time being specified in Part I of the First Schedule such salaries and allowances as were payable to such Ministers for the corresponding Province immediately before the commencement of this Constitution.

PART III—PROVISIONS AS TO THE SPEAKER AND THE DEPUTY SPEAKER OF THE HOUSE OF THE PEOPLE, AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE COUNCIL OF STATES AND THE SPEAKER AND THE DEPUTY SPEAKER OF THE LEGISLATIVE ASSEMBLIES OF STATES IN PART I OF THE FIRST SCHEDULE AND THE CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE LEGISLATIVE COUNCILS OF SUCH STATES

8. There shall be paid to the Speaker of the House of the People and the Chairman of the Council of States such salaries and allowances as were payable to the Speaker of the Constituent Assembly of the Dominion of India immediately before the commencement of this Constitution, and there shall be paid to the Deputy Speaker of the House of the People and to the Deputy Chairman of the Council of States such salaries and allowances as were payable respectively to the Deputy President of the Legislative Assembly and to the Deputy President of the Council of State immediately before the fifteenth day of August, 1947.

9. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly of a State for the time being specified in Part I of the First Schedule and to the Chairman and the Deputy Chairman of the Legislative Council of such State such salaries and allowances as were payable respectively to the Speaker and the Deputy Speaker of the Legislative Assembly and the President and the Deputy President of the Legislative Council of the corresponding Province immediately before the commencement of this Constitution and where the corresponding Province had no Legislative Council immediately before such commencement there shall be paid to the Chairman and the Deputy Chairman of the Legislative Council of the State such salaries and allowances as the Governor of the State may determine.

PART IV—PROVISIONS AS TO THE JUDGES OF THE SUPREME COURT AND OF THE HIGH COURTS

10. There shall be paid to the judges of the Supreme Court and of each High Court within the territory of India except the States for the time being specified in Part III of the First Schedule in respect of time spent on actual service salary at the following rates per mensem, that is to say :

Chief Justice of the Supreme Court	... 5,000 rupees
Any other judge of the Supreme Court	... 4,500 rupees
Chief Justice of a High Court	... 4,000 rupees
Any other judge of a High Court	... 3,500 rupees :

Provided that if a judge of the Supreme Court at the time of his appointment is in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or any of its predecessor Governments or under the Government of a State for the time being specified in Part I of the First Schedule or any of its predecessor Governments, his salary in respect of service in the Supreme Court shall be reduced by the amount of that pension.

11. The Chief Justice or any other judge of the Supreme Court or a Chief Justice or any other judge of a High Court within the territory of India except the States for the time being specified in Part III of the First Schedule shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of India and shall be afforded such reasonable facilities in connection with travelling as the President in the case of the Chief Justice or any other

judge of the Supreme Court, or the Governor of the State in the case of the Chief Justice or any other judge of such High Court, may from time to time prescribe.

12. (1) The rights in respect of leave of absence or pension of the Chief Justice or any other judge of the Supreme Court shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to any such judge of the Federal Court.

(2) The rights in respect of leave of absence or pension of the Chief Justice or any other judge of a High Court within the territory of India except the States for the time being specified in Part III of the First Schedule shall be governed or shall continue to be governed, as the case may be, by the same provisions which were applicable immediately before the commencement of this Constitution to any such judge of such High Court.

(3) For the purposes of this paragraph, a person who was serving as an *ad hoc* judge, acting judge or additional judge at the commencement of this Constitution shall be deemed to have been serving as a judge at that date if, but only if, his service as such *ad hoc* judge, acting judge, or additional judge continued without interruption until his subsequent permanent appointment as a judge.

13. In this Part, unless the context otherwise requires,—

(a) the expression "Chief Justice" includes an acting Chief Justice, and a "Judge" includes an *ad hoc* judge, an acting judge and an additional judge;

(b) "actual service" includes—

(i) time spent by a judge on duty as a judge or in the performance of such other functions as he may be directed by the President or the Governor, as the case may be, or by the Commission appointed under article 289 of this Constitution to discharge;

(ii) vacations, excluding any time during which the judge is absent on leave; and

(iii) joining time on transfer from a High Court to the Supreme Court or from one High Court to another.

PART V—PROVISIONS AS TO THE AUDITOR-GENERAL OF INDIA

14. There shall be paid to the Auditor-General of India a salary at the rate of four thousand rupees per mensem.

15. The rights in respect of leave of absence or pension of the Auditor-General of India shall be governed or shall continue to be governed, as the case may be, by the provisions which were applicable to the Auditor-General of India immediately before the commencement of this Constitution and all references in those provisions to the Governor-General shall be construed as references to the President.

THIRD SCHEDULE

[Articles 62 (4), 81, 103 (6), 144 (2), 165 and 195]

FORMS OF DECLARATIONS

I

Form of oath of office for a Minister for the Union

"I, A.B., do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the Union and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or illwill."

II

Form of oath of secrecy for a Minister for the Union

"I, A.B., do solemnly affirm (or swear) that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the Union except as may be required for the due discharge of my duties as such Minister."

III

Form of declaration to be made by a member of Parliament

"I, A.B., having been elected (or nominated) a member of the Council of States (or the House of the People) do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

IV

Form of declaration to be made by the judges of the Supreme Court

"I, A.B., having been appointed Chief Justice (or a judge) of the Supreme Court of India do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws."

V

Form of oath of office for a Minister for a State for the time being specified in Part I of the First Schedule

"I, A.B., do solemnly affirm (or swear) that I will bear true faith and allegiance to the Constitution of India as by law established, that I will faithfully and conscientiously discharge my duties as a Minister for the State of _____ and that I will do right to all manner of people in accordance with the Constitution and the law without fear or favour, affection or illwill."

VI

Form of oath of secrecy for a Minister for a State for the time being specified in Part I of the First Schedule

"I, A.B., do solemnly affirm (or swear) that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister of _____ except as may be required for the due discharge of my duties as such Minister or as may be specially permitted by the Governor in the case of any matter pertaining to the functions to be exercised by him in his discretion."

VII

Form of declaration to be made by a member of the Legislature of a State for the time being specified in Part I of the First Schedule

"I, A.B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

VIII

Form of declaration to be made by the judges of a High Court

"I, A.B., having been appointed Chief Justice (or a judge) of the High Court at

(or of) ———do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of India as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws."

FOURTH SCHEDULE

[Article 144 (4)]

INSTRUCTIONS TO THE GOVERNORS OF STATES IN PART I OF THE FIRST SCHEDULE

1. In these instructions, unless the context otherwise requires, the term "Governor" shall include every person for the time being discharging the functions of the Governor according to the provisions of this Constitution.

2. In making appointments to his Council of Ministers the Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among the Ministers.

3. In all matters within the scope of the executive power of the State, save in relation to functions which he is required by or under this Constitution to exercise in his discretion, the Governor shall, in the exercise of the powers conferred upon him, be guided by the advice of his Ministers.

4. The Governor shall do all that in him lies to maintain standards of good administration, to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the State, and to secure amongst all classes and creeds co-operation, goodwill and mutual respect for religious beliefs and sentiments.

FIFTH SCHEDULE

[Articles 189 (a) and 190 (1)]

PROVISIONS AS TO THE ADMINISTRATION AND CONTROL OF SCHEDULED AREAS AND SCHEDULED TRIBES

PART I

General

1. *Executive power of a State in scheduled areas:* Subject to the provisions of this Schedule the executive power of a State for the time being specified in Part I of the First Schedule extends to the scheduled areas therein.

2. *Report by the Governor to the Government of India regarding the administration of the scheduled areas:* The Governor of each State having scheduled areas therein shall annually, or whenever so required by the Government of India, make report to that Government regarding the administration of the scheduled areas in that State and the executive power of the Union shall extend to the giving of directions to the State as to the administration of the said areas.

PART II

Provisions as to the States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa

3. *Application of Part II*: The provisions of this Part shall apply to the States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa.

4. *Tribes Advisory Council*: (1) As soon as may be after the commencement of this Constitution, there shall be established in the States of Madras, Bombay, West Bengal, Bihar, the Central Provinces and Berar, and Orissa, a Tribes Advisory Council consisting of not less than ten and more than twenty-five members, of whom, as nearly as may be, three-fourths shall be elected representatives of Scheduled Tribes in the Legislative Assembly of the State.

(2) It shall be the duty of the Tribes Advisory Council generally to advise the Government of the State on all matters pertaining to the administration of the scheduled areas, if any, and the welfare of the Scheduled Tribes in the State.

(3) The Governor may make rules prescribing or regulating as the case may be—

(a) the number of members of the Council, the mode of their appointment and of the appointment of its Chairman and of the officers and servants thereof;

(b) the conduct of its meetings and its procedure in general;

(c) its relations with officials and local bodies in the State; and

(d) all other incidental matters.

5. *Law applicable to scheduled areas*: (1) The Governor may, if so advised by the Tribes Advisory Council for the State, by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a Scheduled area or any part thereof in the State subject to such exceptions and modifications as he may with the approval of the said Council specify in the notification:

Provided that where such Act relates to any of the following subjects, that is to say—

(a) marriage;

(b) inheritance of property;

(c) social customs of the tribes;

(d) land, other than lands which are reserved forest under the Indian Forest Act, 1927 or under any other law for the time being in force in the area in question, including rights of tenants, allotment of land and reservation of land for any purpose;

(e) any matter relating to village administration including the establishment of village panchayats;

the Governor shall issue such direction when so advised by the Tribes Advisory Council.

(2) The Governor may, after consultation with the Tribes Advisory Council for the State, make regulations for any scheduled area in the State with respect to any matter not provided for by any law for the time being in force in such area.

(3) The Governor may also make regulations for any scheduled area in the State with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards or relating to disputes other than those arising out of any such laws as may be defined in such regulations, and may by such regulations empower the headmen or panchayats in any such area to try such cases.

(4) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature

which applies to such area and has been enacted by virtue of the powers conferred on that Legislature by this Constitution.

6. *Alienation and allotment of lands to non-tribals in scheduled areas*: (1) It shall not be lawful for a member of the Scheduled Tribes to transfer any land in a scheduled area to any person who is not a member of the Scheduled Tribes;

(2) No land in a scheduled area vested in the State within which such area is situate shall be allotted to, or settled with, any person who is not a member of the Scheduled Tribes except in accordance with rules made in that behalf by the Governor in consultation with the Tribes Advisory Council for the State.

7. *Regulation of money-lending in scheduled areas*: The Governor may, and if so advised by the Tribes Advisory Council for the State shall, by public notification direct that no person shall carry on business as a money-lender in a scheduled area in the State except under or in accordance with the conditions of a licence issued by an officer authorised in this behalf by the Government of the State and every such direction shall provide that a breach of it shall be an offence, and shall specify the penalty with which it shall be punishable.

8. *Estimated receipts and expenditure pertaining to scheduled areas to be shown separately in the annual financial statement*: The estimated receipts and expenditure pertaining to a scheduled area in a State which are to be credited to, or is to be met from, the revenues of the State shall be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 177 of this Constitution.

9. *Application of Part II to areas other than scheduled areas*: (1) The Governor may, at any time by public notification, direct that all or any of the provisions of this Part shall on and from such date as may be specified in the notification apply in relation to any area in the State inhabited by members of any Scheduled Tribe other than a scheduled area as they apply in relation to a scheduled area in the State, and the publication of such notification shall be conclusive evidence that such provisions have been duly applied in relation to such other area.

(2) The Governor may by a like notification direct that all or any of the provisions of this Part shall on and from such date as may be specified in the notification cease to apply in relation to any area in the State in respect of which a notification may have been issued under sub-paragraph (1) of this paragraph.

PART III

Provisions as to the State of the United Provinces

10. *Application of Part III*: The provisions of this Part shall apply only to the State of the United Provinces.

11. *Scheduled Areas Advisory Committee*: (1) As soon as may be after the commencement of this Constitution the Governor shall by order appoint for the State a Scheduled Areas Advisory Committee, two-thirds of the members of which shall be the members of the Scheduled Tribes. Such order may define the composition, powers and procedure of the committee and may contain such incidental or ancillary provisions as the Governor may consider necessary or desirable.

(2) It shall be the duty of the Scheduled Areas Advisory Committee generally to advise the Government of the State on all matters pertaining to the development of scheduled areas in the State.

12. *Power of Governor to make regulations in certain cases*: (1) The Governor may make regulations for any scheduled area in the State with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards or for the trial of such classes of suits or cases of small pecuniary value as may be specified in such

regulations, and may also by such regulations empower the headmen or panchayats in any such area to try such cases or suits.

(2) The Governor may also make regulations so as to prohibit the transfer of any land in a scheduled area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

(3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legislature by this Constitution.

13. *Estimated receipts and expenditure pertaining to scheduled areas to be shown separately in the Annual Financial Statement*: The estimated receipts and expenditure pertaining to the scheduled areas in the State which are to be credited to, or is to be met from, the revenues of the State shall be shown separately in the Annual Financial Statement of the State to be laid before the Legislature of the State under article 177 of this Constitution.

PART IV

Provisions as to the State of East Punjab

14. *Application of Part IV*: The provisions of this Part shall apply only to the State of East Punjab.

15. *Appointment of Scheduled Areas Advisory Committee*: (1) As soon as may be after the commencement of this Constitution the Governor shall by order appoint for the State a Scheduled Areas Advisory Committee, two-thirds of the members of which shall be the residents of the scheduled areas in the State. Such order may define the composition, powers and procedure of the committee and may contain such incidental or ancillary provisions as the Governor may consider necessary or desirable.

(2) It shall be the duty of the Scheduled Areas Advisory Committee generally to advise the Government of the State on all matters pertaining to the administration of the scheduled areas in the State.

16. *Application of Acts of Parliament or of the Legislature of the State to scheduled areas*: The Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or any part thereof in the State or shall apply to a scheduled area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification.

17. *Power of Governor to make regulations*: (1) The Governor may make regulations for any scheduled area in the State with respect to the trial of cases relating to offences other than those which are punishable with death, transportation for life or imprisonment for five years or upwards, or for the trial of such classes of suits or cases of small pecuniary value as may be specified in such regulations, and may also by such regulations empower the headmen or panchayats in any such area to try such cases or suits.

(2) The Governor may also make regulations so as to prohibit the transfer of any land in a scheduled area in the State by a member of the Scheduled Tribes to any person who is not a member of the Scheduled Tribes.

(3) Any regulations made under this paragraph when promulgated by the Governor shall have the same force and effect as any Act of the appropriate Legislature which applies to such area and has been enacted by virtue of the powers conferred on that Legislature by this Constitution.

PART V

Scheduled Areas

*18. *Scheduled areas*: (1) The areas specified in Parts I to VII of the table below shall be the scheduled areas within the meaning of this Constitution, and any reference in the said table to any division, district, administrative area, tahsil or estate shall be construed as a reference to that division, district, area, tahsil or estate as existing on the date of commencement of this Constitution.

(2) The President may at any time by order—

- (a) direct that the whole or any specified part of a scheduled area shall cease to be a scheduled area or a part of such an area;
- (b) alter, but only by way of rectification of boundaries, any scheduled area;
- (c) on any alteration of the boundaries of a State for the time being specified in Part I of the First Schedule or on the inclusion in Part I of that Schedule of a new State admitted into the Union or established by Parliament by law, declare any territory not previously included in any State so specified to be, or to form part of, a scheduled area;

and any such order may contain such incidental and consequential provisions as appear to the President to be necessary and proper.

*Table***I—Madras**

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

II—Bombay

In the West Khandesh District: The Navalpur Petha, the Akrani Mahal and the villages belonging to the following Mehwassi Chiefs: (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walvi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur.

In the East Khandesh District: The Satpura Hills reserved forest areas.

In the Nasik District: The Kalvan Taluk and Peint Petha.

In the Thana District: The Dahanu and Shahapur Talukas and Mokhada and Umbergaon Pethas.

III—The United Provinces

The Jaunsar-Bawar Pargana of the Dehra Dun District.

The portion of the Mirzapur District south of the Kaimur range.

IV—East Punjab

Spiti and Lahaul in the Kangra District.

V—Bihar

The Ranchi and Singhbhum Districts, and the Latehar sub-division of the Palamau District of the Chota Nagpur Division.

The Santal Parganas District excluding the Godda and Deogarh sub-divisions.

VI—The Central Provinces and Berar

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil and the Dhanora, Dudmala, Gewardha, Jharapara Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

*The committee is of opinion that a provision on the lines of section 91(2) of the Government of India Act, 1935, as originally enacted, should be included in this paragraph to enable any area to be excluded from or included in the scheduled areas and the committee has accordingly added sub-paragraph (2) to this paragraph.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur Jagirs of the Chhindwara District, and the portion of the Panchmarhi Jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauk, Zamindaris of the Durg District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

VII—Orissa

The Ganjam Agency Tracts including Khondmals.

The Koraput District.

SIXTH SCHEDULE

[Articles 189 (b) and 190 (2)]

PROVISIONS AS TO THE ADMINISTRATION OF THE TRIBAL AREAS IN ASSAM

1. *Autonomous districts and autonomous regions*: (1) The tribal areas in each item of Part I of the table appended to paragraph 19 of this Schedule for the time being included in that Part shall be an autonomous district.

(2) If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.

(3) The Governor may, by public notification—

(a) include any area in Part I of the said table,

(b) create a new autonomous district,

(c) increase the area of any autonomous district,

(d) exclude any area from Part I of the said table,

(e) diminish the area of any autonomous district:

Provided that no order shall be made by the Governor under clause (b) or clause (c) of this sub-paragraph except after consideration of the report of a commission appointed under sub-paragraph (1) of paragraph 14 of this Schedule :

Provided further that no order shall be made by the Governor under clause (d) or clause (e) of this sub-paragraph unless a resolution to that effect is passed by the District Council of the autonomous district concerned.

2. *Constitution of District Councils and Regional Councils*: (1) There shall be a District Council for each autonomous district consisting of not less than twenty and not more than forty members of whom not less than three-fourths shall be elected on the basis of adult suffrage.

(2) The territorial constituencies for elections to each District Council shall be so delimited that as far as possible the areas inhabited by the different Scheduled Tribes of the district and the areas, if any, inhabited by other persons shall form separate constituencies :

Provided that no constituency shall be formed which has a total population of less than five hundred.

(3) There shall be a separate Regional Council for each area constituted an autonomous region under sub-paragraph (2) of paragraph 1 of this Schedule.

(4) Each District Council and each Regional Council shall be a body corporate by the name respectively of "the District Council of (name of District)" and "the

Regional Council of (name of Region)", shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(5) Subject to the provisions of this Schedule the administration of an autonomous district shall, in so far as it is not vested under this Schedule in any Regional Council within such district, be vested in the District Council for such district and the administration of an autonomous region shall be vested in the Regional Council for such region.

(6) In an autonomous district with Regional Councils, the District Council shall have only such powers with respect to the areas under the authority of the Regional Council as may be delegated to it by the Regional Council in addition to the powers conferred on it by this Schedule with respect to such areas.

(7) The Governor shall make rules for the first constitution of District Councils and Regional Councils in consultation with the existing Tribal Councils or other representative tribal organisations within the autonomous districts or regions concerned and such rules shall provide for—

- (a) the composition of the District Councils and Regional Councils and the allocation of seats therein ;
- (b) the delimitation of territorial constituencies for the purpose of elections to those Councils ;
- (c) the qualifications for voting at such elections and the preparation of electoral rolls ;
- (d) the qualifications for being elected at such elections as members of such Councils ;
- (e) any other matter relating to or connected with elections or nominations to such Councils ;
- (f) the procedure and the conduct of business in the District and Regional Councils ;
- (g) the appointment of officers and staff of the District and Regional Councils.

(8) The District or the Regional Council may after its first constitution make rules with regard to the matters specified in sub-paragraph (7) of this paragraph and may also make rules regulating—

- (a) the formation of subordinate local Councils or Boards and their procedure and the conduct of their business ; and
- (b) generally all matters relating to the transaction of business pertaining to the administration of the district or region, as the case may be :

Provided that until rules are made by the District or the Regional Council under this sub-paragraph the rules made by the Governor under sub-paragraph (7) of this paragraph shall have effect in respect of elections to, the officers and staff of, and the procedure and the conduct of business in, each such Council :

Provided further that the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, of the Mikir and North Cachar Hills shall be the Chairman *ex-officio* of the District Council in respect of the territories included in items 5 and 6 respectively of Part I of the Table appended to paragraph 19 of this Schedule and shall have power for a period of six years after the first constitution of the District Council, subject to the control of the Governor, to annul or modify any resolution or decision of the District Council or to issue such instructions to the District Council, as he may consider appropriate, and the District Council shall comply with every such instruction issued.

3. *Powers of the District Councils and Regional Councils to make laws*: (1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

- (a) the allotment, occupation or use, or the setting apart of land other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agriculture purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town :
Provided that nothing in such laws shall prevent the compulsory acquisition of any land whether occupied or unoccupied for public purposes by the State of Assam in accordance with the law for the time being in force authorising such acquisition ;
- (b) the management of any forest not being a reserved forest ;
- (c) the use of any canal or water-course for the purpose of agriculture ;
- (d) the regulation of the practice of *jhum* or other forms of shifting cultivation ;
- (e) the establishment of village or town committees or councils and their powers ;
- (f) any other matter relating to village or town administration including village or town police and public health and sanitation ;
- (g) the appointment or succession of Chiefs or Headmen ;
- (h) the inheritance of property ;
- (i) marriage ;
- (j) social customs.

(2) In this paragraph, a "reserved forest" means any area which is a reserved forest under the Assam Forest Regulation, 1899, or under any other law for the time being in force in the area in question.

4. *Administration of justice in autonomous districts and autonomous regions*: (1) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of areas within the district other than those which are under the authority of the Regional Councils, if any, within the district may constitute village councils or courts for the trial of suits and cases other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply or those arising out of any law made under paragraph 3 of this Schedule, to the exclusion of any court in the State, and may appoint suitable persons to be members of such village councils or presiding officers of such courts, and may also appoint such officers as may be necessary for the administration of the laws made under paragraph 3 of this Schedule.

(2) Notwithstanding anything in this Constitution the Regional Council for an autonomous region or any court constituted in this behalf by the Regional Council or, if in respect of any area within an autonomous district there is no Regional Council, the District Council for such district, or any court constituted in this behalf by the District Council, shall exercise the powers of a Court of Appeal in respect of all suits and cases between the parties all of whom belong to Scheduled Tribes within such region or area, as the case may be, other than those to which the provisions of sub-paragraph (1) of paragraph 5 of this Schedule apply, and no other court in the State shall have appellate jurisdiction over such suits or cases and the decision of such Regional or District Council or Court shall be final.

5. *Conferment of powers under the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1898 on the Regional and District Councils and on certain courts and officers for the trial of certain suits and offences*: (1) The Governor may, for the trial of suits or cases arising out of any law in force in any autonomous district or region being a law specified in this behalf by the Governor, or for the trial of offences punishable with death, transportation for life, or imprisonment for a term of not less than five years under the Indian Penal Code or under any other law for the time being applicable to such region or district, confer on the District Council or the Regional Council having authority over such district or region or on courts constituted by such District Council or on any officer appointed in this behalf by the Governor, such powers under the Code of Civil Procedure, 1908 or, as the case may

be, the Code of Criminal Procedure, 1898, as he deems appropriate, and thereupon the said council, court or officer shall try the suits, cases or offences in exercise of the powers so conferred.

(2) The Governor may withdraw or modify any of the powers conferred on a District Council, Regional Council, court or officer under sub-paragraph (1) of this paragraph.

(3) Save as expressly provided in this paragraph the Code of Civil Procedure, 1908 and the Code of Criminal Procedure 1898, shall not apply to the trial of any suits, cases or offences in an autonomous district or in any autonomous region.

6. *Powers of the District Council to establish primary schools, etc.*: The District Council for an autonomous district may establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways in the district and in particular may prescribe the language and the manner in which primary education shall be imparted in the primary schools in the district.

7. *District and Regional Funds*: (1) There shall be constituted for each autonomous district, a District Fund and for each autonomous region, a Regional Fund to which shall be credited all moneys received respectively by the District Council for that district and the Regional Council for that region in the course of the administration of such district or region, as the case may be, in accordance with the provisions of this Constitution.

(2) Subject to the approval of the Governor rules may be made by the District Council and by the Regional Council for the management of the District Fund or, as the case may be, the Regional Fund, and the rules so made may prescribe the procedure to be followed in respect of payment of money into the said Fund, the withdrawal of moneys therefrom, the custody of moneys therein and any other matter connected with or ancillary to the matters aforesaid.

8. *Powers to assess and collect land revenue and to impose taxes*: (1) The Regional Council for an autonomous region in respect of all lands within such region and the District Council for an autonomous district in respect of all lands within the district except those which are in the areas under the authority of Regional Councils, if any, within the district, shall have the power to assess and collect revenue in respect of such lands in accordance with the principles for the time being followed by the Government of Assam in assessing lands for the purpose of land revenue in the State of Assam generally.

(2) The Regional Council for an autonomous region in respect of areas within such region and the District Council for an autonomous district in respect of all areas in the district except those which are under the authority of Regional Councils, if any, within the district, shall have power to levy and collect taxes on land and buildings, and tolls on persons resident within such areas.

(3) The District Council for an autonomous district shall have the power to levy and collect all or any of the following taxes within such district, that is to say—

(a) tax on professions, trades, callings and employments:

(b) a tax on animals, vehicles and boats;

(c) taxes on the entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries; and

(d) taxes for the maintenance of schools, dispensaries or roads.

(4) A Regional Council or District Council, as the case may be, may make regulations to provide for the levy and collection of any of the taxes specified in sub-paragraphs (2) and (3) of this paragraph.

9. *Licences or leases for the purpose of prospecting for, or extraction of, minerals*: (1) No licence or lease shall be granted by the Government of Assam for the purpose of prospecting for, or the extraction of, minerals in any area comprised within an autonomous district, save in consultation with the District Council for that district.

(2) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of Assam in respect of any area within an autonomous district as may be agreed upon between the Government of Assam and the District Council of such district shall be made over to that District Council.

(3) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (2) of this paragraph to the District Council and the decision of the Governor shall be final.

10. *Power of District Council to make regulations for the control of money-lending and trading by non-tribals:* (1) The District Council of an autonomous district may make regulations for the regulation and control of money-lending or trading within the district by persons other than Scheduled Tribes resident in the district.

(2) Such regulations may—

(a) prescribe that no one except the holder of a licence issued in that behalf shall carry on the business of money-lending;

(b) prescribe the maximum rate of interest which may be charged or be recovered by a money-lender;

(c) provide for the maintenance of accounts by money-lenders and for the inspection of such accounts by officers appointed in this behalf by the District Council;

(d) prescribe that no person who is not a member of the Scheduled Tribes resident in the district shall carry on wholesale or retail business in any commodity except under a licence issued in that behalf by the District Council:

Provided that no such regulations may be made under this paragraph unless they are passed by a majority of not less than three-fourths of the total membership of the District Council:

Provided further that it shall not be competent under any such regulations to refuse the grant of a licence to a money-lender or a trader who has been carrying on business within the district since before the time of the making of such regulations.

11. *Publication of laws, rules and regulations made under the Schedule:* All laws, rules and regulations made under this Schedule by a District Council or a Regional Council shall be published forthwith in the Official Gazette of the State and shall on such publication have the force of law.

12. *Application of Acts of Parliament and of the Legislature of the State to autonomous districts and autonomous regions:* Notwithstanding anything contained in this Constitution—

(a) no Act of the Legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;

(b) the Governor may, by public notification, direct that any Act of Parliament or of the Legislature of the State to which the provisions of clause (a) of this paragraph do not apply shall not apply to an autonomous district or an autonomous region, or shall apply to such district or region or any part

thereof subject to such exceptions or modifications as he may with the approval of the District Council for such district or the Regional Council for such region specify in the notification, if a resolution recommending the issue of such direction is passed by such District Council or such Regional Council, as the case may be.

13. *Estimated receipts and expenditure pertaining to autonomous districts to be shown separately in the annual financial statement:* The estimated receipts and expenditure pertaining to an autonomous district which are to be credited to, or is to be made from, the revenues of the State of Assam shall be shown separately in the annual financial statement of the State to be laid before the Legislature of the State under article 177 of this Constitution.

14. *Appointment of Commission to inquire into and report on the administration of autonomous districts:* (1) The Governor of Assam may at any time appoint a Commission to examine and report on any matter specified by him relating to the administration of the autonomous districts in the State, or may appoint a Commission to inquire into and report from time to time on the administration of autonomous districts in the State generally and in particular on—

- (a) the provision of educational and medical facilities and communications in such districts ;
- (b) the need for any new or special legislation in respect of such districts ; and
- (c) the administration of the laws, regulations and rules made by the District and Regional Councils ;

and define the procedure to be followed by such Commission.

(2) The report of every such Commission with the recommendations of the Governor with respect thereto shall be laid before the Legislature of the State by the Minister concerned together with an explanatory memorandum regarding the action proposed to be taken thereon by the Government of Assam.

(3) In allocating the business of the Government of the State among his Ministers the Governor of Assam may place one of his Ministers specially in charge of the welfare of the autonomous districts in the State.

15. *Annulment or suspension of acts and resolutions of the District or Regional Councils:* (1) If at any time the Governor is satisfied that an act or resolution of a Regional Council or a District Council is likely to endanger the safety of India, he may annul or suspend such act or resolution and take such steps as he may consider necessary (including the suspension of the Council and the assumption to himself of all or any of the powers vested in or exercisable by the Council) to prevent the commission or continuance of such act, or the giving of effect to such resolution.

(2) Any order made by the Governor under sub-paragraph (1) of this paragraph together with the reasons therefor shall be laid before the Legislature of the State as soon as possible and the order shall, unless revoked by the Legislature of the State, continue in force for a period of twelve months from the date on which it was so made :

Provided that if and so often as a resolution approving the continuance in force of such order is passed by the Legislature of the State the order shall unless cancelled by the Governor continue in force for a further period of twelve months from the date on which under this paragraph it would otherwise have ceased to operate.

(3) The functions of the Governor under this paragraph shall be exercised by him in his discretion.

16. *Dissolution of a District or Regional Council:* The Governor may on the recommendation of a Commission appointed under paragraph 14 of this Schedule by public notification order the dissolution of a Regional or a District Council and—

- (a) direct that a fresh general election shall be held immediately for the reconstitution of the Council, or

- (b) subject to the previous approval of the Legislature of the State assume the administration of the area under the authority of such Council himself or place the administration of such area under the Commission appointed under the said paragraph or any other body considered suitable by him for a period not exceeding twelve months :

Provided that when an order under clause (a) of this paragraph has been made the Governor may take the action referred to in clause (b) of this paragraph with regard to the administration of the area in question pending the reconstitution of the Council on fresh general election :

Provided further that no action shall be taken under clause (b) of this paragraph without giving the District or the Regional Council, as the case may be, an opportunity of being heard by the Legislature of the State.

17. *Application of the provisions of this Schedule to areas specified in Part II of the table appended to paragraph 19 :* (1) The Governor of Assam may—

- (a) subject to the previous approval of the President, by public notification, apply all or any of the foregoing provisions of this Schedule to any tribal area specified in Part II of the table appended to paragraph 19 of this Schedule or any portion of such area and thereupon such area or portion shall be administered in accordance with such provisions, and

- (b) may also with like approval exclude any tribal area specified in Part II of the said table or any portion thereof from the said table.

(2) Until a notification is issued under sub-paragraph (1) of this paragraph in respect of any tribal area specified in Part II of the said table or any portion of such area, the administration of such area or portion thereof, as the case may be, shall be carried on by the President through the Governor of Assam as his agent and the provisions of Part VIII of this Constitution shall apply thereto as if such area or portion thereof were a territory specified in Part IV of the First Schedule.

18. *Transitional provisions:* As soon as possible after the commencement of this Constitution the Governor of Assam shall take steps for the constitution of a District Council for each autonomous district in the State under this Schedule and until a District Council is so constituted for an autonomous district the administration of such district shall be vested in the Governor in his discretion and the following provisions shall apply to the administration of the areas within such district instead of the provisions contained in this Schedule, namely :

- (a) no Act of Parliament or of the Legislature of the State shall apply to such area unless the Governor by public notification so directs ; and the Governor in giving such a direction with respect to any Act may direct that the Act shall in its application to the area or to any specified part thereof have effect subject to such exceptions or modifications as he thinks fit ;

- (b) the Governor may make regulations for the peace and good government of such area and any regulations so made may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to such area. Regulations made under this clause shall be submitted forthwith to the President and until assented to by him shall have no effect ;

- (c) the Governor shall exercise his functions under clauses (a) and (b) of this paragraph in his discretion.

19. *Tribal areas:* The areas specified in Parts I and II of the table below shall be the tribal areas within the State of Assam, and any reference in the said table to any district or administrative area shall be construed as a reference to that district or area as existing on the date of commencement of this Constitution :

Table

Part I

1. The Khasi and Jaintia Hills District excluding the town of Shillong.
2. The Garo Hills District.
3. The Lushai Hills District.
4. The Naga Hills District.
5. The North Cachar Sub-division of Cachar District.
6. The Mikir Hills portion of Nowgong and Sibsagar Districts excepting the mouzas of Barpathar and Sarupathar.

Part II

1. The Sadiya and Balipara Frontier Tracts.
2. The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).
3. The Naga Tribal Area.

SEVENTH SCHEDULE

[Article 217]

LIST I—UNION LIST

*1. The defence of the territory of India and of every part thereof and generally all preparation for defence, as well as all such acts as may be conducive in times of war to its successful prosecution and after its termination to effective demobilization.

2. Central Intelligence Bureau.

3. Preventive detention in the territory of India **for reasons connected with defence, external affairs or the security of India.

***4. The raising, training, maintenance and control of the Naval, Military and Air Forces of the Union and their employment; the strength, organization and control of the armed forces raised and employed in States for the time being specified in Part III of the First Schedule.

5. Industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war.

6. Naval, Military and Air Force works.

7. Local self-government in cantonment areas, the constitution and powers within such areas of cantonment authorities, the regulation of house accommodation in such areas and the delimitation of such areas.

8. Arms, firearms, ammunition and explosives.

9. Atomic energy and mineral resources essential to its production.

10. Foreign Affairs; all matters which bring the Union into relation with any foreign country.

11. Diplomatic, consular and trade representation.

12. United Nations Organization.

*The committee has omitted the entry 'Requisitioning of lands for defence purposes including training and manœuvres' as the matter will be covered by entry 43.

**The words 'reasons connected with defence, external affairs or the security of India' have been substituted for the words 'reasons of State' in this entry to avoid conflict with entry 1 of the State List relating to preventive detention for reasons connected with the maintenance of public order.

***This follows the entry as adopted by the Constituent Assembly, but the Chairman of the Drafting Committee strongly feels that the second part of the entry relating to armed forces in States in Part III of the First Schedule should be deleted in order to preclude such States from maintaining any armed forces of their own.

13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
14. War and Peace.
15. The entering into and implementing of treaties and agreements with foreign countries.
16. Foreign jurisdiction.
17. Trade and commerce with foreign countries.
18. Foreign loans.
19. Citizenship, naturalization and aliens.
20. Extradition.
21. Passports and visas.
22. Piracies, felonies and offences against the law of nations committed on the high seas and in the air.
23. Admission into, and emigration and expulsion from the territory of India.
24. Pilgrimages to places beyond India.
25. Port quarantine; seamen's and marine hospitals, and hospitals connected with port quarantine.
26. Import and export across customs frontiers as defined by the Government of India.
27. *Posts and telegraphs.
28. **Telephones, wireless, broadcasting and other like forms of communication.
29. Post Office Savings Bank.
30. Airways; aircraft and air navigation; provision of aerodromes; regulation and organization of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.
31. National highways declared to be such by Parliament by law.
32. Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels, and the rule of the road on such waterways; carriage of passengers and goods on such waterways.
33. Maritime shipping and navigation, including shipping and navigation on tidal waters; provision of education and training for the mercantile marine and regulation and such education and training provided by States and other agencies.
34. Admiralty jurisdiction.
35. Ports declared to be major ports by or under law made by Parliament or existing law including their delimitation and the constitution and powers of port authorities therein.
36. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
37. Carriage of passengers and goods by air or by sea.
38. Union railways; the regulation of all railways other than minor railways in respect of the safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers; the regulation of minor railways in respect

*For restrictions on the power of Parliament to make laws with respect to 'Posts and Telegraphs' in relation to States for the time being specified in Part III of the First Schedule, *see* article 224 (a).

**For restrictions on the power of Parliament to make laws with respect to telephones, wireless, broadcasting and other like forms of communication, in relation to States for the time being specified in Part III of the First Schedule, *see* article 224 (b).

of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.

39. The institutions known on the 15th day of August, 1947, as the Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial and any other institution financed by the Government of India wholly or in part and declared by Parliament by law to be an institution of national importance.

40. The institutions known on the 15th day of August, 1947, as the Benares Hindu University and the Aligarh Muslim University.

41. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Union Meteorological organisations.

42. Property of the Union and the revenue therefrom, but as regards property situated in a State subject always to legislation by the State, save in so far as Parliament by law otherwise provides.

*43. Acquisition or requisitioning of property for the purposes of the Union subject to the provisions of List III with respect to regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purposes of the Union.

44. Reserve Bank of India.

45. Public debt of the Union.

46. Currency, foreign exchange, coinage and legal tender.

47. Banking.

48. Cheques, bills of exchange, promissory notes and other like instruments.

49. Insurance.

****50.** Corporations, that is to say, the incorporation, regulation and winding up of trading corporations, including banking insurance and financial corporations but not including cooperative societies, and of corporations, whether trading or not, with objects not confined to one State, but not including universities.

51. Patents, copyright, inventions, designs, trademarks and merchandise marks.

*****52.** Constitution, organization, jurisdiction and powers of the Supreme Court and fees taken.

53. Extension of the jurisdiction of a High Court having its principal seat in any State within the territory of India except the States for the time being specified in Part III of the First Schedule to, and exclusion of the jurisdiction of any such High Court from, any area outside that State.

54. Jurisdiction and powers of all courts, other than the Supreme Court, with respect to any of the matters in this List.

55. Census.

56. Inquiries, surveys, and statistics for the purposes of the Union.

57. Union agencies and institutes for the following purposes, that is to say, for

*The committee is of opinion that the principle on which compensation is to be paid for the acquisition or the requisitioning of property should be the subject-matter of the Concurrent List and this entry has been revised accordingly and a new entry 35 has been inserted for the purpose in the Concurrent List.

**For restrictions on the power of Parliament to make laws with respect to 'corporations' in relation to States for the time being specified in Part III of the First Schedule *see* article 224 (c).

***The committee is of opinion that the reference to 'Federal Judiciary' should be omitted from this entry as there should not be parallel judiciaries in the Union. The committee has, however, inserted a new article 219 providing power to Parliament to establish additional courts for the better administration of the laws made by Parliament and existing laws with respect to matters in the Union List on the lines of section 101 of the British North America Act, 1867.

research, for professional or technical training, or for the promotion of special studies.

58. Union Public Services and Union Public Service Commission.

59. Industrial disputes concerning Union employees.

*60. Ancient and Historical Monuments declared by Parliament by law to be of national importance; archaeological sites and remains.

61. Establishment of standards of weight and measure.

62. Opium, so far as regards cultivation and manufacture, or sale for export.

63. Petroleum and other liquids and substances declared by Parliament by law to be dangerously inflammable, so far as regards possession, storage and transport.

64. Development of industries where development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

65. Regulation of labour and safety in mines and oilfields.

66. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

67. Extension of the powers and jurisdiction of members of a police force belonging to any part of a State for the time being specified in Part I or Part II of the First Schedule to any area in any other State so specified, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the State; extension of the powers and jurisdiction of members of a force belonging to any State to railway areas outside that State.

68. Elections to Parliament and of the President and Deputy President; and Election Commission to superintend, direct and control such elections.

69. The emoluments and allowances and rights in respect of leave of absence of the President, the salaries and allowances of the Ministers for the Union and of the Chairman and Deputy Chairman of the Council of States and of the Speaker and Deputy Speaker of the House of the People; the salaries, allowances and privileges of the members of Parliament; the salary, allowances and the conditions of service of the Auditor-General of India.

70. The enforcement of attendance of persons for giving evidence or producing documents before committees of Parliament.

71. Migration from one State to another.

72. Inter-State quarantine.

73. Inter-State trade and commerce subject to the provision of entry 33 of List II.

74. The development of inter-State waterways for purposes of flood control, irrigation, navigation and hydro-electric power.

75. Fishing and fisheries beyond territorial waters.

76. Manufacture and distribution of salt by Union agencies, regulation and control of manufacture and distribution of salt by other agencies.

77. Provision for dealing with grave emergencies in any part of the territory of India affecting the Union.

78. Lotteries organized by the Government of India or the Government of any State.

**79. Stock Exchanges and futures market and taxes other than stamp duties on transactions therein.

*The committee is of opinion that Ancient and Historical Monuments declared by Parliament by law to be of national importance should be mentioned in this entry and not any and every Ancient and Historical Monument.

**This entry has been inserted to follow the recommendation of the Expert Committee on the Financial Provisions of the Constitution.

80. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts.

81. Duties in respect of succession to property other than agricultural land.

82. Estate duty in respect of property other than agricultural land.

83. Terminal taxes on goods or passengers, carried by railway or air; taxes on railway fares and freights.

84. Taxes on income other than agricultural income.

85. Duties of customs including export duties.

*86. Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics: non-narcotic drugs;

but including medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

87. Corporation tax.

88. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

89. Offences against laws with respect to any of the matters in this List.

90. Fees in respect of any of the matters in this List, but not including fees taken in any court.

91. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

LIST II—STATE LIST

1. Public order (but not including the use of naval, military or air forces in aid of the civil power); preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.

2. The administration of justice, constitution and organization of all courts, except the Supreme Court, and fees taken therein.

3. Jurisdiction and powers of all courts except the Supreme Court, with respect to any of the matters in this List; procedure in Rent and Revenue Courts.

4. Police, including railway and village police.

5. Prisons reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions.

6. Public debt of the State.

7. State Public Services and State Public Service Commissions.

8. Works, lands and buildings vested in or in the possession of the State.

**9. Compulsory acquisition of land except for the purposes of the Union subject

*The committee is of opinion that duties of excise on medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry should be included in this entry as duties leviable by the Union, as it thinks that uniform rates of excise duty should be fixed in respect of these goods in all States for the sake of development of the pharmaceutical industry. The levy of different rates in different States is likely to lead to a discrimination in favour of goods imported from foreign countries which would be detrimental to the interest of Indian manufacturers as was pointed out by the Drugs Enquiry Committee in their report in 1931.

**See footnote to entry 43 of List I (Union List).

to the provisions of List III with respect to regulation of the principles on which compensation is to be determined for property acquired or requisitioned for the purposes of a State.

10. Libraries, museums and other similar institutions controlled or financed by the State.

**11. Elections to the Legislature of the State and of the Governor of the State/ for the constitution of a panel for the purpose of the appointment of a Governor for the State; and Election Commission to superintend, direct and control such elections.

12. The emoluments and allowances and rights with respect to leave of absence of the Governor of the State, salaries and allowances of the Ministers for the State, of the Speaker and Deputy Speaker of the Legislative Assembly, and if there is a Legislative Council, of the Chairman and Deputy Chairman thereof; the salaries, allowances and privileges of the members of the Legislature of the State.

13. The enforcement of attendance of persons for giving evidence or producing documents before committees of the Legislature of the State.

14. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

15. Public health and sanitation; hospitals and dispensaries; registration of births and deaths.

16. Pilgrimages, other than pilgrimages to places beyond India.

17. Burials and burial grounds; cremations and cremation grounds.

18. Education including Universities other than those specified in entry 40 of List I.

19. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I; minor railways subject to the provisions of List I with respect to such railways; municipal tramways; ropeways; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways; ports, subject to the provisions in List I with regard to major ports; vehicles other than mechanically propelled vehicles.

20. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 74 of List I.

21. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases.

22. Improvement of stock and prevention of animal diseases; veterinary training and practice.

23. Pounds and the prevention of cattle trespass.

24. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.

25. Courts of Wards, encumbered and attached estates.

26. Treasure trove.

27. Forests.

28. Regulation of mines and oilfields and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.

29. Fisheries.

**The words 'for the constitution of a panel for the purpose of the appointment of a Governor for the State' will have to be used for the words 'of the Governor of the State' in this entry if the second alternative is adopted in article 131.

30. Protection of wild birds and wild animals.
31. Gas and gasworks.
32. Trade and commerce within the State; markets and fairs.
33. Regulation of trade, commerce and intercourse with other States for the purposes of the provisions of article 244 of this Constitution.
34. Money-lending and money-lenders; relief of agricultural indebtedness.
35. Inns and inn-keepers.
36. Production, supply and distribution of goods.
37. Development of industries, subject to the provisions in List I with respect to the development of certain industries under the control of the Union.
38. Adulteration of foodstuffs and other goods.
39. Weights and measures except establishment of standards.
40. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.
41. Relief of the poor; unemployment.
42. The incorporation, regulation and winding up of corporations not being corporations specified in List I, or Universities; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies.
43. Charities and charitable institutions, charitable and religious endowments and religious institutions.
44. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.
45. Betting and gambling.
46. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues.
47. The rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.
48. Duties in respect of succession to agricultural land.
49. Estate duty in respect of agricultural land.
50. Taxes on passengers and goods carried on inland waterways.
51. Taxes on agricultural income.
52. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in the territory of India:
 - (a) alcoholic liquors for human consumption;
 - (b) opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs;

*but not including medical and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.
53. Taxes on lands and buildings.
54. Taxes on mineral rights, subject to any limitations imposed by Parliament by law relating to mineral development.
55. Capitation taxes.
56. Taxes on professions; trades, callings and employments.
57. Taxes on animals and boats.
- **58. Taxes on the sale, turnover or purchase of goods including taxes in lieu

*See footnote to entry 86 of List I (Union List).

**This entry has been revised to follow the recommendation of the Expert Committee on the Financial Provisions of the Constitution.

thereof on the use or consumption within the State of goods liable to taxes within the State on sale, turnover or purchase; taxes on advertisements.

59. Taxes on vehicles suitable for use on roads, whether mechanically propelled or not, including trams.

60. Taxes on the consumption or sale of electricity.

61. Taxes on the entry of goods into a local area for consumption, use or sale therein.

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

63. Tolls.

64. Inquiries and statistics for the purpose of any of the matters in this List.

65. Offences against laws with respect to any of the matters in this List.

66. Fees in respect of any of the matters in this List, but not including fees taken in any court.

LIST III—CONCURRENT LIST

1. Criminal Law, including all matters included in the Indian Penal Code at the date of commencement of this Constitution, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of the naval, military and air forces in aid of the civil power.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of commencement of this Constitution.

3. Removal of prisoners and accused persons from one State to another State.

4. Civil Procedure, including the Law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Constitution; the recovery in a State for the time being specified in Part I or Part II of the First Schedule of claims in respect of taxes and other public demands including arrears of land revenue and sums recoverable as such, arising outside that State.

5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.

6. Marriage and divorce; infants and minors; adoption.

*7. Wills, intestacy and succession; joint family and partition; and matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

8. Transfer of property other than agricultural land; registration of deeds and documents.

9. Trusts and Trustees.

10. Contracts, including partnership agency, contracts of carriage, and other special forms of contracts, but not including contracts relating to agricultural land.

11. Arbitration.

12. Bankruptcy and insolvency.

13. Administrators-general and official trustees.

14. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.

15. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in List II.

16. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.

*The committee is of opinion that if there is to be a uniform personal law, e.g., for Hindus, throughout India, all the matters included therein at present should be put into the Concurrent List. Hence the enlargement of this entry.

17. Legal, medical and other professions.
18. Newspapers, books and printing presses.
19. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental deficient.
20. Poisons and dangerous drugs.
21. Mechanically propelled vehicles.
22. Boilers.
23. Prevention of cruelty to animals.
24. Vagrancy; nomadic and migratory tribes.
25. Factories.
26. Welfare of labour; conditions of labour; provident funds; employers' liability and workmen's compensation; health insurance, including invalidity pensions; old age pensions.
27. Unemployment and social insurance.
28. Trade Union; industrial and labour disputes.
29. The prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.
30. Electricity.
31. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways, subject to the provisions of List I with respect to national waterways.
32. The sanctioning of cinematograph films for exhibition.
33. Persons subjected to preventive detention under the authority of the Union.
34. Economic and social planning.
- *35. The principles on which compensation is to be determined for property acquired or requisitioned for the purposes of the Union or a State.
36. Inquiries and statistics for the purpose of any of the matters in this List.
37. Fees in respect of any of the matters in this List, but not including fees taken in any court.

EIGHTH SCHEDULE

[Article 303 (I) (X)]

SCHEDULED TRIBES

Part I—Madras

1. Bagata
2. Bhottadas—Bodo Bhottada, Muria Bhottada and Sano Bhottada.
3. Bhumias—Bhuri Bhumia and Bodo Bhumia.
4. Bissoy—Barangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoriya, Kollai, Konde, Paranga, Panga Jodia, Sodo Jodia and Takora.
5. Dhakkada.
6. Dombs—Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telega and Ummia.
7. Gadabas—Boda Gadaba, Cerllam Gadaba, Franji Gadaba, Jodia Gadaba, Olars Gadaba, Pangi Gadaba and Paranga Gadaba.
8. Ghasis—Boda Ghasis and San Ghasis.
9. Gondi—Modya Gond and Rajo Gond.

*See footnote to entry 43 of List I (Union List).

10. Goudus—Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.
11. Kosalya Goudus Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and Pullo-soriya Goudus.
12. Magatha Goudus Bernia Goudu, Bodo Magatha, Dongayath Goudu, Ladya Goudu, Ponna Magatha and Sana Magatha.
13. Seerithi Goudus.
14. Holva.
15. Jadapus.
16. Jatapus.
17. Kammaras.
18. Khattis-Khatti Kommaro and Lohara.
19. Kodu.
20. Kommar.
21. Konda Dhoras.
22. Konda Kapus.
23. Kondareddis.
24. Kondhs—Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.
25. Kotia—Bartika, Benthoriya, Dhulia or Dulia, Holva Paiko, Putiya, Sanrona and Sidho Paiko.
26. Koya or Goud Raja of Rasha Koyas, Lingadhari with its subsects—Koyas, (ordinary) and Kottu Koyas.
27. Madigas.
28. Malas or Agency Malas or Valmikies.
29. Malis—Korchia Malis, Paiko Malis and Pedda Malis.
30. Maune.
31. Manna Dhora
32. Mukha Dhora—Nooka Dhora.
33. Muli or Muliya.
34. Muria.
35. Ojulus or Metta Komsalies.
36. Omanaito.
37. Paigarapu.
38. Palasi.
39. Palli.
40. Pentias.
41. Porjas—Bodo, Bonda, Daruva, Didua, Jodia, Mundili, Pengu, Pydi and Saliya.
42. Reddi Dhoras.
43. Relli or Sachandi.
44. Ronas.
45. Savaras—Kapu Savaras, Khutto Savaras and Maliya Savaras.
46. The residents of the Laccadive, Minicoy and Amindivi Islands.

Part II—Bombay

1. Barda.
2. Bavacha.
3. Bhil.
4. Chodhra.
5. Dhanka.
6. Dhodia.
7. Dubla.
8. Gamit, or Gamta.

9. Gond.
10. Kathodi, or Katkari.
11. Konkna.
12. Koli Mahadeb.
13. Mavchi.
14. Naikda, or Nayak
15. Pardhi, including Advichincher or Phanse Pardhi.
16. Patelia.
17. Pomla.
18. Powara.
19. Rathawa.
20. Tadv Bhili.
21. Thakur.
22. Valvai.
23. Varli.
24. Vasava.

Part III—West Bengal

1. Botia.
2. Chakma.
3. Kuki.
4. Lepcha.
5. Munda.
6. Makh.
7. Mro.
8. Oraon.
9. Santal.
10. Tippera.
11. Any other tribe notified by the Government of West Bengal.

Part IV—The United Provinces

1. Bhuinya.
2. Baiswar.
3. Baiga.
4. Gond.
5. Kharwar.
6. Kol.
7. Ojha.
8. Any other tribe notified by the Government of the United Provinces.

Part V—East Punjab

The Tibetans in Spiti and Lahaul in the Kangra District.

Part VI—Bihar

- I. A resident of the State of Bihar belonging to any of the following tribes:
 1. Asur.
 2. Banjara.
 3. Bathudi.
 4. Bentkar.
 5. Binjhia.
 6. Birhor.
 7. Birjia.
 8. Chero.
 9. Chik Baraik.
 10. Gadaba.
 11. Ghatwar.
 12. Gond.

13. Gorait.
14. Ho.
15. Juang.
16. Karmali.
17. Kharia.
18. Kharwar.
19. Khetauri.
20. Khond.
21. Kisan.
22. Koli.
23. Kora.
24. Korwa.
25. Mahli.
26. Mal Paharia.
27. Munda.
28. Oraon.
29. Parhiya.
30. Santal.
31. Sauria Paharia.
32. Savar.
33. Tharu.

II. A resident in any of the following districts or police stations, that is to say, the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas, and the police stations of Arsha, Balarampur, Jhalda, Jaipur Baghmundi, Chandil, Ichagarh, Barahabhum, Patamda Banduan and Manbazar in the district of Manbhum, belonging to any of the following tribes:

1. Bauri.
2. Bhogta.
3. Bhuiya.
4. Bhumij.
5. Ghasi.
6. Pan.
7. Rajwar.
8. Turi.

III. A resident in the Dhanbad sub-division or in any of the following police stations in the Manbhum District, that is to say, Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para Chas, Chandankiari and Kashipur, belonging to the Bhumij tribe.

Part VII—The Central Provinces

1. Gonda.
2. Kavar.
3. Maria.
4. Muria.
5. Halba.
6. Pardhan.
7. Oraon.
8. Binjhar.
9. Andh.
10. Bharia-Bhumia.
11. Koli.
12. Bhattra.
13. Baiga.
14. Kolam.

15. Bhil.
16. Bhuinhar.
17. Dhanwar.
18. Bhaina.
19. Parja.
20. Kamar.
21. Bhunjia.
22. Nagarchi.
23. Ojha.
24. Korku.
25. Kol.
26. Nagasia.
27. Sawara.
28. Korwa.
29. Majhwar.
30. Kharia.
31. Saunta.
32. Kondh.
33. Nihal.
34. Birhul (or Birhor)
35. Rautia.
36. Pando.

Part VIII—Assam

The following tribes and communities:

1. Kachari.
2. Boro or Boro-Kachari.
3. Rabha.
4. Miri.
5. Lalung.
6. Mikir.
7. Garo.
8. Hajonfi.
9. Deori.
10. Abor.
11. Mishmi.
12. Dafia.
13. Singpho.
14. Khampti.
15. Any Naga or Kuki tribe.
16. Any other tribe or community notified by the Government of Assam.

Part IX—Orissa

I. A resident of the State of Orissa belonging to any of the following tribes:

1. Bagata.
2. Banjari.
3. Chenchu.
4. Gadaba.
5. Gond.
6. Jatapu.
7. Khond (Kond).
8. Konda-Dora.
9. Koya.
10. Paroja.
11. Saora (Savar).

12. Oraon.
13. Santal.
14. Kharia.
15. Munda.
16. Banjara.
17. Binjhia.
18. Kisan.
19. Koli.
20. Kora.

II. A resident of any of the following areas, that is to say, the Koraput and Khondmals Districts and the Ganjam Agency belonging to either of the following tribes:

1. Dom or Dombo.
2. Pan or Pano.

III. A resident of the Sambalpur District belonging to any of the following tribes:

1. Bauri.
2. Bhuiya
3. Bhumij.
4. Ghasi.
5. Turi.
6. Pan or Pano.

APPENDIX

SEPARATE NOTES SUBMITTED TO THE CONSTITUENT ASSEMBLY BY SHRI ALLADI KRISHNASWAMI AYYAR, MEMBER, DRAFTING COMMITTEE

While I may point out that there is no difference in principle between my colleagues and myself either in regard to the distribution of legislative power between the Parliament and the units or in regard to the Union Parliament assuming power over a subject in the Provincial (State) List when it assumes or becomes of national importance, I should like to submit the following separate note for the consideration of the Constituent Assembly in regard to the articles bearing on the above matters, i.e., articles 217, 223(1) and 226.

Distribution of Legislative Power

2. The question as to the distribution of legislative power has been decided by the Constituent Assembly and it is settled that the residuary power should vest in the Centre. The only question, therefore, is how to frame the articles so as to carry out this idea. My colleagues have decided to follow the scheme in section 100 of the Government of India Act and to have a separate article for the residuary power as also to have it as an item in the list of subjects allotted to the Union. The point of my plan is that inasmuch as it is agreed that the residuary power is to vest in the Centre (Union Parliament), the various enumerated items in the Union List are merely illustrative of the general residuary power vested in the Centre. The proper plan, therefore, is to define the powers of the States or Provincial units in the first instance, then deal with the concurrent power and lastly deal with the power of the Centre or the Union Parliament while at the same time making out a comprehensive list of the powers vested in the Centre by way of illustration to the general power. The plan adopted in section 100 of the Government of India Act was to some extent accounted for by the fact that there was no agreement then among political parties as regards the location of residuary power and it was left for the Governor-General to decide by which Legislature the residuary power was

to be exercised in any particular place in cases not covered by any of the Lists. There is no such problem facing us now. A canvassing of the meaning and import of individual items in the Central List has become of much less importance now than under the provisions of the Government of India Act.

The repetition of "notwithstanding" in every clause of section 100 has been the subject of prolonged and unnecessary arguments in courts.

No complication is likely to arise by reason of the States in Part III coming into the scheme of the Union as according to the Draft Constitution the scheme of distribution is subject to agreement with the States and that is provided for by articles 224 and 225.

Further, in the articles as framed there is no provision to the effect that the power of legislation carries with it the power to make any provisions essential to the effective exercise of the legislative authority. Some such provisions occur in the Australian and American Constitutions, *vide* section 51 of the Australian Constitution and article I, section 8, sub-section 18 of the American Constitution.

I would, therefore, suggest for the consideration of the Constituent Assembly the following article as a substitute for articles 217 and 223(1) in the draft.

"(1) The Legislature of the States in Part I, Schedule I, shall have exclusive power to make laws for the State or for any part thereof in relation to matters falling within the classes of subjects specified in List I (corresponding to Provincial Legislative List).

"(2) The Legislature of any of the States in Part I, Schedule I, shall in addition to the powers under clause (1) have power to make laws for the State or any part thereof in relation to matters falling within the classes of subjects specified in List II, provided, however, that the Union Parliament shall also have power to make laws in relation to the same matters within the entire area of the Union or any part thereof, and an Act of the Legislature of the State shall have effect in and for the State as long as and as far only as it is not repugnant to any Act of the Union Parliament.

"(3) In addition to the powers conferred by the previous sub-section, the Union Parliament may make laws for the peace, order and good government of the Union or any part thereof in relation to all matters not falling within the classes of subjects enumerated in List I and in particular and without prejudice to the generality of the foregoing, the Union Parliament shall have exclusive power to make laws in relation to all matters falling within the classes of subjects enumerated in List III.

"(4) (a) The Union Parliament shall have power to make laws for the peace, order and good government of the States in Part II, Schedule I.

(b) Subject to the general powers of Parliament under sub-section (a), the Legislature of the States in Part II, Schedule I, shall have the power to make laws in relation to matters coming within the following classes of subjects :

Provided, however, that any law passed by that unit shall have effect in and for that unit so long and as far only as it is not repugnant to any law of the Union Parliament.

(This provision is necessary, if the recommendations of the *ad hoc* Committee on Chief Commissioners' Provinces in this regard are accepted.)

"(5) The power to legislate either of the Union Parliament or the Legislature of any State shall extend to all matters essential to the effective exercise of the legislative authority vested in the particular legislature.

"(6) Where a law of a State is inconsistent with a law of the Union Parliament or to any existing law with respect to any of the matters enumerated in List I or (List II), the law of the Parliament or as the case may be the existing law shall prevail and the law of the State shall to the extent to repugnancy be void."

(This follows the Australian and American provisions. Without embarking upon

an examination of each section and each clause, a court may easily come to the conclusion that an Act taken as a whole is repugnant to another law.)

If it is felt necessary, special provision may be inserted in regard to laws in respect of matters in the Concurrent List on the lines of article 231(2) though I think such a provision may not be necessary in view of the overriding power of the Central Legislature.

Articles 226 and 228

3. I accept the principle underlying article 226 that if any subject in the Provincial List assumes national importance or becomes one of national interest in the language of the article, it ought to be possible for the Union to encroach (if one may use that expression) upon the Provincial field and take to itself the power to legislate on any subject in the Provincial List. But the very basis of the assumption of that power is that the subject can no longer be regarded as one merely of importance for the particular State but has assumed national dimensions. If these premises be correct, there is no justification for States to continue to retain the power. The object of the assumption of the power by the Union is not by some simple or easy method without having recourse to a change in the Constitution to convert what is Provincial or State power into a Concurrent power. This principle is not kept in view in article 228 which provides that the Province will continue to have the legislative power in particular subject. The conversion of what is a Provincial power into a Concurrent power would offer a premium for interference by the Centre and may strike ultimately at the federal structure of the Constitution itself. I would, therefore, suggest the substitution of the following words:

"on the ground that any matter enumerated in the State List has assumed national importance" for the words:

"or expedient in the national interest...resolution" and add the words.

"that Parliament should make laws with respect to such matter"; before the words "it shall be lawful for the Parliament etc.".

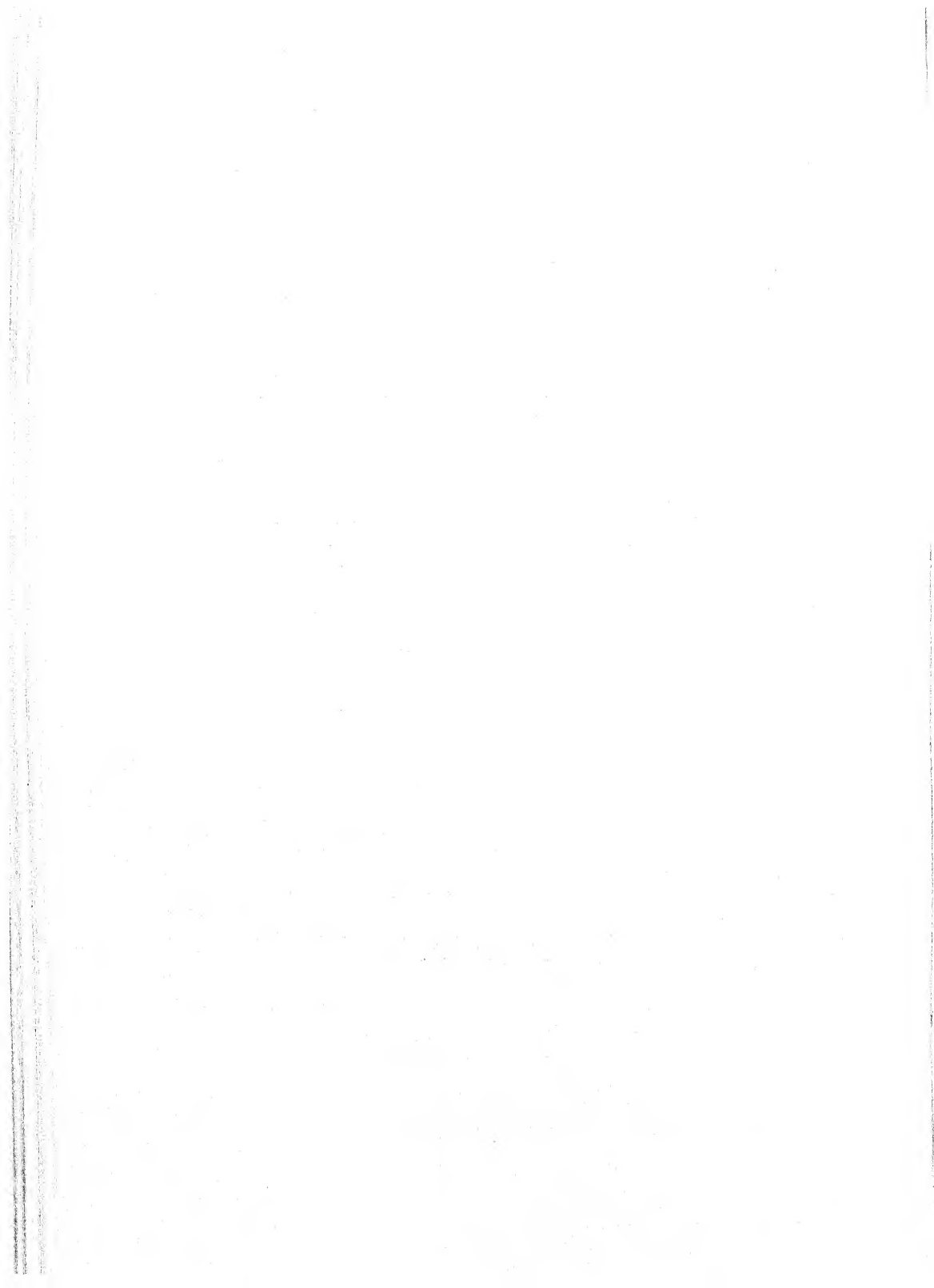
In article 228 for the words "Nothing in articles 226 and 227" substitute "Nothing in article 227".

ALLADI KRISHNASWAMI

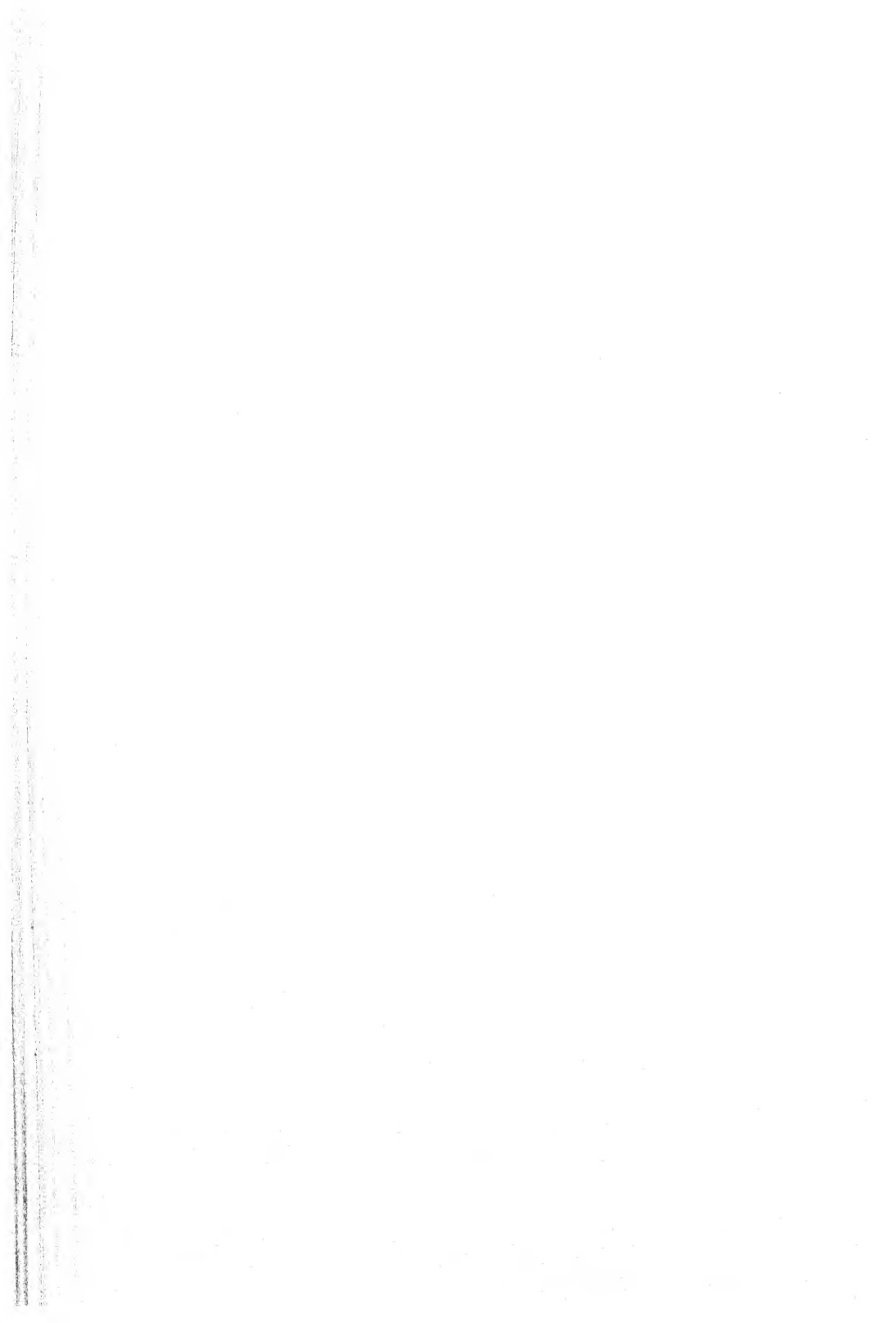
Article 218 is unnecessary, as it deals with the Supreme Court which is an item in List I.

Article 221 deals with a High Court. There is no point in specially providing for the jurisdiction as the jurisdiction of all courts including the High Court is covered by items relating to the jurisdiction in the 3 Lists. As the articles dealing with the distribution of legislative power specially refer to the Lists, a separate article dealing with the Supreme High Court is superfluous and unnecessary.

ALLADI KRISHNASWAMI



PART SIX
REPORTS ON TRIBAL AND EXCLUDED AREAS



REPORTS ON TRIBAL AND EXCLUDED AREAS

February 1947-March 1948

[The Cabinet Mission's statement of May 16, 1946, mentioned the tribal areas and the excluded areas as requiring the special attention of the Constituent Assembly. The Advisory Committee on the rights of citizens, minorities and tribal and excluded areas set up by the Constituent Assembly in terms of paragraph 20 of that statement was required to report to the Constituent Assembly upon a scheme for the administration of these areas. [Document I, 48(i).] The motion adopted by the Constituent Assembly on January 24, 1947, setting up this committee, laid down that the Advisory Committee should appoint sub-committees to prepare schemes for the administration of the North-Western tribal areas, the North-Eastern tribal areas and the excluded and partially excluded areas. At its meeting held on February 27, 1947, the Advisory Committee accordingly set up three sub-committees on (i) the North-East Frontier (Assam) tribal and excluded areas; (ii) the excluded and partially excluded areas in the Provinces other than Assam; and (iii) the tribal areas in the North-West Frontier Province and Baluchistan. [Document II, 5(i).]

One of the political consequences of the British Government's statement of June 3, 1947, was that following a referendum, the North-West Frontier Province and Baluchistan became part of the territory of the Dominion of Pakistan and as a result the tribal areas in this region became a concern of that Dominion. The Sub-Committee on the Tribal Areas in the North-West Frontier Province and Baluchistan was not therefore called upon to function on behalf of the Constituent Assembly of India.

The Sub-Committee on Assam submitted its report on July 28, 1947, to the Chairman of the Advisory Committee. The Sub-Committee on the Excluded and Partially Excluded Areas in Provinces (Other than Assam) submitted its report in two instalments. The interim report dated August 18, 1947, related to the areas in the Provinces of Madras, Bombay, Bengal, the Central Provinces and Orissa. The final report relating to the areas in Bihar, the United Provinces and Punjab was submitted in September 1947. In the meanwhile there was held, at the suggestion of the Chairman of the Advisory Committee, a joint meeting of the two sub-committees. The recommendations of this joint meeting were submitted on August 25, 1947.

At this time the drafting of the Constitution was already under way and on the suggestion of the Advisory Committee, the Drafting Committee included suitable provisions in the Draft Constitution of February 1948, to give effect to the recommendations of these two sub-committees. The Advisory Committee accepted these recommendations with two comparatively minor changes; and it was agreed that these would be moved as amendments in due course if necessary. The reports of these two sub-committees were forwarded by the Chairman of the Advisory Committee to the President of the Constituent Assembly on March 4, 1948, and were formally placed before the Assembly on November 4, when Ambedkar moved consideration of the Draft Constitution.

In this part are included: (i) Letter from the Chairman of the Advisory Committee to the President of the Constituent Assembly, (ii) Report of the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee, (iii) Reports of the Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee, (iv) Joint Report of the Excluded and Partially Excluded Areas (Other than Assam) and the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committees, and (v) Minutes of the Advisory Committee.]

(i) LETTER FROM VALLABHBHAI PATEL TO THE PRESIDENT OF THE
CONSTITUENT ASSEMBLY
March 4, 1948

FROM

THE HONOURABLE SARDAR VALLABHBHAI J. PATEL,
CHAIRMAN,
ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS,
MINORITIES, TRIBAL AREAS, ETC.

TO

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA.

DEAR SIR,

On behalf of the members of the Advisory Committee I have the honour to forward herewith the reports of the North-East Frontier (Assam) Tribal and Excluded Areas and Excluded and Partially Excluded Areas (Other than Assam) Sub-Committees, adopted by the committee at the meeting held on the 24th February, 1948. The two sub-committees had been set up by the Advisory Committee in their meeting held on the 27th February, 1947 in pursuance of paragraphs 19(iv) and 20 of the Cabinet Mission's statement dated the 16th May, 1946 and the two reports had been drawn up after they had undertaken extensive tours of the Provinces, examined

witnesses and representatives of the people and the Provincial Governments and taken the views of the different political organizations.

2. Acting on an earlier suggestion of the Advisory Committee made on the 7th December, 1947, the Drafting Committee had already incorporated in the Draft Constitution provisions on the basis of the recommendations contained in the reports of the two sub-committees. This coupled with the fact that the recommendations were practically unanimous made our task easy, and except for the two amendments mentioned in the Appendix to this report, the Advisory Committee have accepted all the recommendations of the two sub-committees. In regard to these amendments, it was agreed that these should be noted for the present and necessary amendments made later.

3. Summaries of the recommendations of the two sub-committees are given in the report (Volume I) of Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee. Provisions embodying these recommendations are contained in the Fifth, Sixth and Eighth Schedules attached to the Draft Constitution.

Yours truly,
V. J. PATEL,
Chairman.

APPENDIX

NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS

1. The following proviso is to be added to paragraph D (1) of appendix 'A' to Part I of the report:

Provided that the Assam High Court shall have power of revision in cases where there is failure of justice or where the authority exercised by the District Court is without jurisdiction.

2. In Schedule 'B' of the report the words "excluding the plains portion" be added after each of the items in the schedule so as to read as follows:

The Sadiya and Balipara Frontier Tracts (excluding the plains portion).

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract and the plains portion).

The Naga Tribal Area (excluding the plains portion).

(II) REPORT OF THE NORTH-EAST FRONTIER (ASSAM) TRIBAL AND
EXCLUDED AREAS SUB-COMMITTEE
July 28, 1947

FROM

THE CHAIRMAN,
NORTH-EAST FRONTIER (ASSAM) TRIBAL
AND EXCLUDED AREAS SUB-COMMITTEE.

To

THE CHAIRMAN,
ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS,
MINORITIES, TRIBAL AREAS, ETC.,
CONSTITUENT ASSEMBLY OF INDIA,
COUNCIL HOUSE, NEW DELHI.

SIR,

I have the honour to forward herewith my Sub-Committee's report on the Tribal and Excluded Areas of Assam. The report has been drawn up by us after a tour of the Province which included visits to the Lushai Hills District, the North Cachar Hills Sub-Division, the Mikir Hills and the Naga Hills District. The committee could not visit the Garo Hills District on account of bad weather and difficult communications and the Jowai Sub-Division of the Khasi Hills District could not also be visited for the same reason. We however examined witnesses and representatives of the Garo Hills District at Gauhati and paid a visit also to certain Garo villages on and near the Goalpara road. At most of the places we visited, we had to be satisfied with a visit to the headquarters of the district or tract and with a visit to one or two villages in the neighbourhood. To visit places in the interior would have taken us a great deal more of time and delayed our report considerably. Representatives of the tribes however visited the headquarters, even from long distances, and on the whole we feel that we have been able to get into contact with all the important representatives of the hill people and to take their views on the future administration of the areas. We have also taken the views of the different political organizations in the Province and recorded the evidence of officials.

2. Except for the Frontier Tracts and Tribal Areas, we coopted two members from the tribes of each of the districts visited. The coopted members, with the exception of Mr. Kezehol (representative of the Kohima section of the Naga National Council and himself an Angami) who submitted his resignation during the final meeting at Shillong, discussed the proposals and signed (subject to dissent in the case of Mr. Khetloushe and Mr. Aliba Imti) the minutes of the meeting*.

3. In connection with the cooption of members we would like to mention the "District Conference" convened by the Superintendent of the Lushai Hills as an elected body purporting to be representative of the whole of the Lushai Hills. The election to this body which consisted of twenty chiefs and twenty commoners with the Superintendent himself as President was boycotted by the Mizo Union which was the only representative body of the Lushais at that time and clearly could not be regarded by us as representing more than a section of opinion, largely that of certain officials and chiefs controlled by them. Consequently the criticism that we coopted

members without consulting the Superintendent or his conference carries, in our opinion, no weight.

4. In the Naga Hills, the committee had to face a similar situation in the sense that certain officials were influencing the extreme elements of the Naga National Council. Discussion of a number of points could not be carried on to the full extent on account of lack of agreement within the Naga National Council but we understand that on the occasion of the Governor's visit to Kohima, the more reasonable elements put forward their views. We find that our proposals not only contain the substance of these but go further in some respects. The resignation of Mr. Kezehol was due to the fact that his section of the Naga National Council was dissident. Our proposals correspond fully to the spirit of the resolution of the Naga National Council passed at Wokha in June 1946, and we feel confident that the majority of people in the Naga Hills District will find that our proposals go a long way towards meeting even their present point of view.

5. Our report (Volume I) is divided into two parts and the evidence forms a separate volume (Volume II)*. In the first part of our report we have given a bird's eye view of the areas as a whole, noting in particular their common features and giving the framework of the scheme of administration recommended by us. In Part II a largely descriptive account of the different areas is given separately and we have mentioned their special features or needs.

6. We regret that our colleague Mr. Aliba Imti has not been able to attend the meeting to sign the report and hope that he will be able to attend the meeting of the Advisory Committee.

I have the honour to be,

Sir,

Your most obedient servant,

G. N. BARDOLOI,

Chairman.

PART I

Introductory: The Excluded and Partially Excluded Areas of Assam as scheduled by the Order-in-Council under the Government of India Act, 1935 are as follows:

Excluded Areas: The North-East Frontier (Sadiya, Balipara and Lakhimpur) Tracts.

The Naga Hills District.

The Lushai Hills District.

The North Cachar Hills Sub-Division of the Cachar District.

Partially Excluded Areas: The Garo Hills District.

The Mikir Hills (in the Nowgong and Sibsagar Districts).

*Not reproduced.

The British portion of the Khasi and Jaintia Hills District, other than Shillong Municipality and Cantonment.

There is also an area to the east of the Naga Hills District known as the Naga Tribal Area, the position of which is covered by the provisions of Section 311(1) of the Government of India Act: The Tirap Frontier Tract which adjoins the Lakhimpur Frontier Tract has no defined boundary with Burma.

The Assam Tribal and Excluded Areas Sub-Committee is required to report on a scheme of administration for all these areas.

2. *General Description*—(a) *The Frontier Tracts*: The Schedule quoted above shows the North East Frontier Tracts as excluded areas. In considering the list of areas to be excluded or partially excluded and making recommendations to H.M.G. in 1935 the Government of India wrote as follows:

"Balipara, Sadiya and Lakhimpur are essentially frontier areas inhabited by tribes in an early stage of development. Balipara has no defined outer boundaries and extends to the confines of Bhutan and Tibet." It will be seen that it was mentioned that Balipara has no definite outer boundaries but the position of Sadiya and Lakhimpur or the Tirap Frontier Tract was apparently the same. On the Tirap Frontier Tract in fact, the boundary with Burma has yet to be settled and all three regions include considerable areas of as yet virtually unadministered and only partially explored territory. The position of Balipara and Sadiya however differs from that of the Tirap Frontier in that there exists a boundary between Tibet and India. The facts are that in 1914 there was a tripartite convention with Tibet and China regarding the relations of the three Governments and in particular regarding the frontier between India and Tibet. The convention which contained an agreement about the frontier line between India and Tibet was ratified by the Tibetan authorities at Lhasa, and the line known as the MacMahon Line was indicated on a map of which a copy was given to the Lhasa Government which acknowledged it. The existence of this line was for a long time not known to the Assam Government, and on the other hand it was found that there was no notification under Section 60 of the Government of India Act, 1919, specifying the northern frontier of Assam, with the result that the MacMahon Line which is the frontier between Tibet and India is the legal boundary of Assam as well. In practice the position is peculiar. Though the Governor of Assam is vested with authority over the Frontier Tracts, it is taken to be exercised, not by virtue of the provisions applicable to excluded areas of the Government of India Act, 1935, but as the agent of the Governor-General under Section 123 of the Act, *vide* notification No. I-X dated the 1st April, 1937 of the Government of India in the External Affairs Department (Appendix B). All the costs of administration of the tracts are also borne by the Central Government and the Central Government are inclined to treat them as tribal areas within the meaning of Section 311 of the Government of India Act. On the other hand, the local officials treat

the area as consisting of two parts, one, which they call the Excluded Area and stretches up to the "Inner Line" boundary, and the Tribal Area, which by them is understood to mean the area beyond the "Inner Line" boundary. The "Inner Line" boundary is roughly along the foot of the hills and the area bounded by it is occupied by a somewhat mixed population, while the hill portions beyond it are purely inhabited by the tribes. This treatment again does not appear to be strictly justifiable in law though it may be convenient to think of the administered plains portion of the area separately from the not fully administered hills. Since the frontier tracts are administered in practice by the Central Government as tribal areas, the absence of a notification under Section 60 of the Government of India Act, 1919, was regarded as an oversight. The position of these areas will be discussed further at a later stage, but it is clear from the foregoing that the Naga Tribal Area on the Eastern Frontier and the Balipara, Sadiya and Lakhimpur or Tirap Frontier Tracts on the North-Eastern Frontier fall under one category. The Balipara Frontier Tract which includes the Subansiri area is the tract over which there is as yet the smallest measure of control and administration. This tract and the Sadiya Frontier Tract are inhabited by tribes such as the Senjithonji, Dafia, Apa Tani, Momba (Balipara) the Abor, Mishmi, Hkampti (Sadiya). The Tirap Frontier contains Singphaws (who were originally Kachins) and a number of tribes classed as Nagas, while the Naga Tribal Area is largely inhabited by Nagas of the Konyak group. The policy on these frontiers is to establish administration and control over the whole area right up to the frontier, and a five year plan has been sanctioned by the Government of India. This plan mostly covers the Sadiya and Balipara Tracts but a few schemes of the Naga Tribal Area are also included in it. A separate plan for the development of the latter is under consideration.

(b) *The Excluded Areas*: The Excluded Areas of the Naga Hills District, the Lushai Hills District and the North Cachar Hills Sub-Division fall within the second category of areas over which the Provincial Ministry has no jurisdiction whatever and the revenues expended in this area are not subject to the vote of the Provincial Legislature. The Naga Hills District is the home of a good number of tribes classed as Naga, such as Angami, Ao, Sema, Lhota. Adjoining it is the Naga Tribal Area in the eastern portion of which a good deal of head hunting still goes on. Though the tribes are all called Naga, they speak different languages and have differing customs and practices also. The Lushai on the other hand, though consisting of a number of clans, are practically one people and speak a common language. The Kuki in the North Cachar Hills and elsewhere are people of the same stock as Lushai or Mizo and speak the same language or dialect. The Lushai Hills District except for an inappreciable number of Lakhers in the extreme south contains a uniform population. The North Cachar Hills, on the other hand provide sanctuary for the Kachari, Naga, Kuki, Mikir and Khasi. The largest

of the tribes here are the Kachari and the villages of the different tribes are more or less interspersed.

(c) *Partially Excluded Areas*: The third category is the Partially Excluded Areas consisting of the Khasi Hills District (British portion), the Garo Hills District and the Mikir Hills which fall in two districts viz., Nowgong and Sibsagar. These areas are administered by the Provincial Government subject to the powers of the Governor to withhold or apply the laws of the Provincial Legislature with or without modification, or to make special rules. The Khasis, incidentally, are the only one of the tribes in this area who speak a Monkhmer language; all the other tribes speak Tibeto-Burmese languages. Generally speaking, they inhabit the areas which bear their names but there are villages outside these districts which also contain some of the tribes. Thus, the Garo inhabit a number of villages in the Mymensing district of Bengal in addition to many villages in the districts of Kamrup and Goalpara in Assam. The Khasi population is not only to be found in the British portion of the Khasi and Jaintia Hills, but the States (which comprise a fairly large area) round about Shillong are inhabited by the Khasis. These States, twentyfive in number, have the special feature that their chiefs are actually elected in a few cases by free election, though in the majority of cases the election is confined to a particular clan, the electorate consisting of Myntries of the clan only in some States, by a joint electorate of Myntries and electors elected by the people in general in others. The States have comparatively little revenue or authority and seem to depend for a good deal of support on the Political Officer in their relations with their peoples. There is a strong desire among the people of the States to "federate" with their brothers in the British portion, a feeling which the people on the British side reciprocate. Some of the Siems also appear to favour amalgamation but their idea of the Federation differs from that of the people in that the chiefs seek a greater power for themselves than the people are prepared to concede to them.

Of the people in the Partially Excluded Areas, the Khasi are the most advanced and the Mikir the least. Unlike the Naga and the Lushai Hills these areas have had much more contact with people in the plains, situated as they are between the valleys of the Brahmaputra and the Surma. They have representatives in the Provincial Legislature who, in the case of the Garo and the Mikir Hills, are elected by franchise of the Nokmas and the village headmen respectively.

3. *Development*: As regards the degree of development and education in the Excluded and Partially Excluded Areas, the most backward areas, comparatively, appear to be the Mikir and the Garo Hills, both of which are Partially Excluded Areas. The Frontier Tracts, parts of which must be inhabited by people with no contact with civilization or education, are of course on a different footing. The Khasi Hills have probably benefited by the fact that the capital of the Province is situated in them. In the Garo

Hills, Christian Missions have spread some education along with Christianity but the Mikir Hills have suffered from the fact that they are divided between two districts Nowgong and Sibsagar, and thus nobody's child. Partial exclusion has in a way been responsible for their backwardness also, since both the Governor of the Province and the Ministry can disclaim the sole responsibility for the area. The Sub-Divisional Officers and Deputy Commissioners of these Hills moreover seem to have taken little interest in them and hardly any touring has been performed by officers in the Mikir areas. On the whole, however, the Hill Districts show considerable progress. The Khasi Hills have provided Ministers in the Provincial Government. The people of the Lushai Hills who have benefited by the activities of the missionaries among them cannot be said to be behind the people of the plains in culture, education and literacy. In literacy particularly they are in a better position than a good number of the plains areas and the general percentage of literacy among them is about 13 per cent., while the literacy among men only is about 30 per cent. Among the Naga also may be found a number of persons of college education, though the district as a whole appears to be less advanced than the Lushai Hills. In the Naga Hills, the demand for education is keener in the Mokokchung Sub-Division than in the Kohima Sub-Division. In the North Cachar Hills, the development of the people has not been impressive and the Sub-Division as a whole should be classed as more backward than other areas and comparable with the Mikir rather than the Lushai Hills. While education has made some progress in all these areas, the conditions of life and pursuit of non-agricultural occupations cannot be said to have reached the level attained in the plains, although the degree of intelligence necessary is undoubtedly available in most of the areas, even in the tribal areas. We were in fact impressed by the intelligence of the Abor and Mishmi, the Sherdukpen, the Hkampti and even the Konyak of the tribal area. The skill of many of the tribes in weaving and tapestry contains the elements of a very attractive cottage industry—at present articles are made largely for personal use—but agriculture is practically the only occupation, and with the exception of considerable areas occupied by the Angami in the Naga Hills under terraced and irrigated cultivation and the advanced cultivation in the Khasi Hills the mode of agriculture is still the primitive one of *jhuming*. Portions of the forest are burnt down and in the ashes of the burnt patch the seeds are sown; the following year a new patch of forest is felled and cultivated and so on, the first patch perhaps being ready again for cultivation after three or four years. The *jhuming* patches develop a thick growth of bamboo or weeds and trees do not grow on them. Thus the method is destructive of good jungle. In certain parts, of course, conditions may be said to be unfavourable to the terracing of the hillsides and there is no source of water supply other than rainfall. In the Lushai Hills for instance comparatively few areas have the gradual slope which renders terracing easy; in the North Cachar Hills Sub-Division, irrigation is difficult

to arrange and the small hamlets occupied by the tribes cannot provide enough labour for terracing work. Attempts have however been made to introduce terracing and improved methods of cultivation as well as the growing of fruits, and there is little doubt that good progress will soon be feasible in these directions. A certain amount of political consciousness has also developed among the tribes, and we were much impressed by the demand of the Abor in the Sadiya Frontier Tract for representation in the Provincial Legislature. The idea of Government by the people through their chosen representatives is not a totally new conception to most of the hill people whose ways of life centre around the tribal and village councils, and what is required now is really an understanding of the mechanism and implications as well as the responsibilities of the higher stages of administration and the impracticability as well as the undesirable results of small groups of rural population being entrusted with too much responsibility. Generally speaking, it can be stated that all the excluded areas of the Province, not taking into account at this stage the frontier and tribal areas, have reached the stage of development when they can exercise their votes as intelligently as the people of the plains. On the ground of inability to understand or exercise the franchise therefore, there is absolutely no justification for keeping the excluded areas in that condition any longer.

As regards the Frontier Tracts, not only has there been little education except in the fringes or plains portions, but administration has yet to be fully established over large tracts and the tribes freed from feuds or raids among themselves and from the encroachment and oppression of Tibetan tax collectors. The removal of the trade blocks set up by these Tibetans on the Indian side of the MacMahon Line sometimes creates delicate situations. Thus the country is in many ways unripe for regular administration. Only when the new five year programme has made good headway will there be an adequate improvement in the position. Even the village councils in these tracts appear to be ill-organized and there seems to be little material as yet for local self-governing institutions though it may be possible to find a few people who can speak for their tribe. The plains portions are however on a different footing and the question of including them in the provincial administration needs careful examination. For example, we are of the view that *prima facie* there is little justification to keep the Saikhoaghat, the Sadiya plains portion and possibly portions of the Balipara Frontier Tract under special administration.

4. *The Hill People's Views* : Though the Constituent Assembly Secretariat and we ourselves, issued a leaflet to provide information and create interest in the political future of India, the Constituent Assembly's functions and the objects of our tour, the Hill people, even of the Excluded Areas, were not found lacking in political consciousness. Perhaps not without instigation by certain elements, this consciousness has even instilled ideas of an independent status the external relations under which would be governed by treaty or

agreement only. In the Lushai Hills District the idea of the Superintendent who constituted himself the President of the "District Conference" which he himself had convened (*see* Para 5 Part II) was that the District should manage all affairs with the exception of defence in regard to which it should enter into an agreement with the Government of India. A "Constitution" based on this principle was later drafted by the Conference. (The great majority of the Lushai however cannot be regarded as holding these views and it is doubtful if the District Conference represents the views of anybody other than certain officials and chiefs.) In the Naga Hills, although the original resolution as passed by the Naga National Council at Wokha contemplated the administration of the area more or less like other parts of Assam, a demand was subsequently put forward for "an interim Government of the Naga people" under the protection of a benevolent "guardian power" who would provide funds for development and defence for a period of ten years after which the Naga people would decide what they would do with themselves. Here again it seems to us clear that the views of a small group of people, following the vogue in the Naga Hills of decisions being taken by general agreement and not by majority—gained the acceptance of the National Council, for little more purpose than that of presenting a common front. In other areas more moderate views prevail. In the Garo Hills the Draft Constitution asked for all powers of Government including taxation, administration of justice etc. to be vested in the legal council and the only link proposed with the Provincial Government was in respect of a few subjects like higher education, medical aid etc. other than the subjects of defence, external affairs and communications which were not provincial subjects. In the Mikir Hills and in the North Cachar Hills, which are the least vocal and advanced of the areas under consideration, there would probably be satisfaction if control over land and local customs and administration of justice are left to the local people. The Khasi Hills proposals were for a federation of the States and British portions; otherwise the proposals were similar to those made for the Garo Hills. A feeling common to all of the Hill Districts is that people of the same tribe should be brought together under a common administration. This has led to a demand for rectification of boundaries. The Lushai want the Kuki of Manipur and other areas in their boundaries, the Naga want the Zemi areas of the North Cachar Hills included in their district and so on.

5. *Political Experience* : Except for the Municipality of Shillong, there are no statutory local self-governing bodies in any of the Hill Districts. The partially excluded areas have elected representatives in the Provincial Legislature but in the Garo Hills the franchise is limited to the Nokmas and in the Mikir Hills to the headmen. Generally however, the tribes are all highly democratic in the sense that their village councils are created by general assent or election. Chiefship among certain tribes like the Lushai is hereditary (although certain chiefs have been appointed by the Superintendent)

but among other tribes appointment of headmen is by common consent or by election or, in some cases, selection from particular families. Disputes are usually settled by the chief or headman or council of elders. In the Naga Hills what is aimed at is general agreement in settling disputes. Allotment of land for *jhum* is generally the function of the chiefs or headmen (except in the Khasi and Jaintia Hills) and there are doubtless many other matters pertaining to the life of the village which are dealt with by the chiefs or elders, but while this may form a suitable background for local self-government the tribes altogether lack experience of modern self-governing institutions. The "District Conference" of the Lushai Hills, the tribal council of the North Cachar Hills and the Naga National Council are very recent essays in organizing representative bodies for the district as a whole and have no statutory sanction. While there is no doubt that the Naga, Lushai, Khasi and Garo will be able to manage a large measure of local autonomy, the North Cachar tribes and the Mikir may yet want a period of supervision and guidance.

6. *The Special Features*: Whatever the capacity of the different councils or conferences to manage the affairs of the areas may be, the general proposals for the administration of these areas must be based upon the following considerations:

(a) The distinct social customs and tribal organizations of the different peoples as well as their religious beliefs: for instance, the Khasi and the Garo have a matriarchal system, the Lushai have hereditary chiefs, the Ao Naga have got the council of elders called '*tatar*' which is periodically renewed by election. The laws of succession of the Lushai permit the youngest son of the family to succeed to the property of his father. Similarly, in the case of the Garo, the youngest daughter gets her mother's property and so on. Christianity has made considerable headway among the Lushai, Khasi and the Garo, but large numbers of the hill people still continue their own tribal forms of worship which some people describe as 'animism'.

(b) The fear of exploitation by the people of the plains on account of their superior organization and experience of business: the hill people fear that if suitable provisions are not made to prevent the people of the plains from acquiring land in the hill areas, large numbers of them will settle down and not only occupy land belonging to the hill people but will also exploit them in the non-agricultural professions. Thus, the hill people seem to attach special value to the present system of an 'Inner Line' to cross which non-tribals entering the area require a pass, and the provisions prohibiting non-tribals from settling down or carrying on business without the approval of the district officer. It is felt that even industries should not be started in the hill areas by non-tribals because that might mean exploitation of the people and the land by the non-tribals. In addition to these main points there is the question of preserving their ways of life and language, and method of cultivation etc. Opinions are expressed that there could be

adequate protection in these matters only by transferring the government of the area entirely into the hands of the hill people themselves.

(c) In making suitable financial provisions it is feared that unless suitable provisions are made or powers are conferred upon the local councils themselves the Provincial Government may not, due to the pressure of the plains people, set apart adequate funds for the development of the tribal areas. In this connection we invite a reference to the views expressed in the Assam Government's Factual Memorandum on p. 67 of Constituent Assembly Pamphlet "Excluded and Partially Excluded Areas"—I*.

7. *Provisions of 1935 Act*: The provisions of the Government of India Act are based on the principle that legislation which is passed by the Provincial Legislature is often likely to be unsuitable for application to the Hill Districts. The mechanism provided for "filtering" the legislation is therefore to empower the Governor of the Province to apply or not to apply such legislation. The full implications of the provisions of the Government of India Act are discussed in the Constituent Assembly pamphlets on "Excluded and Partially Excluded Areas" Parts I & II* and it is perhaps not necessary to discuss them exhaustively here. The main features of the provisions are that certain areas have been scheduled as excluded or partially excluded; it is possible for areas to be transferred from the category of excluded to the category of partially excluded by an Order-in-Council and, similarly, from the category of partially excluded to the category of non-excluded; legislation will not apply automatically to any such scheduled area even if it is a partially excluded area, but will have to be notified by the Governor who, if he applies them at all, can make alterations. The revenues for excluded areas are charged to the revenues of the Province and special regulations, which do not apply to the rest of the Province, may be made by the Governor in his discretion for excluded and partially excluded areas.

8. *Future Policy*: The continuance or otherwise of exclusion cannot be considered solely from the point of view of the general advancement of an area. If that were so, all that would be necessary in the case of areas like the Lushai Hills which are considered sufficiently advanced would be to remove the feature of exclusion or partial exclusion. Such action may be suitable in the case of certain partially excluded areas in other parts of India. But in the Hills of Assam the fact that the hill people have not yet been assimilated with the people of the plains of Assam has to be taken into account though a great proportion of hill people now classed as plains tribals have gone a long way towards such assimilation. Assimilation has probably advanced least in the Naga Hills and in the Lushai Hills, and the policy of exclusion has of course tended to create a feeling of separateness.

On the other hand, it is the advice of anthropologists (*see* Dr. Guha's evidence*) that assimilation cannot take place by the sudden breaking up of

*Not printed.

tribal institutions and what is required is evolution or growth on the old foundations. This means that the evolution should come as far as possible from the tribe itself but it is equally clear that contact with outside influences is necessary though not in a compelling way. The distinct features of their way of life have at any rate to be taken into account. Some of the tribal systems such as the system of the tribal council for the decision of disputes afford by far the simplest and the best way of dispensation of justice for the rural areas without the costly system of courts and codified laws. Until there is a change in the way of life brought about by the hill people themselves, it would not be desirable to permit any different system to be imposed from outside. The future of these hills now does not seem to lie in absorption in that the hill people will become indistinguishable from nonhill people but in political and social amalgamation.

9. *The Hill People's Land* : The anxiety of the hill people about their land and their fear of exploitation are undoubtedly matters for making special provisions; it has been the experience in other parts of India and in other countries, that unless protection is given, land is taken up by people from the more advanced and crowded areas. The question has already acquired serious proportions in the plains portions of Assam and the pressure of population from outside has brought it up as a serious problem which in the next few years may be expected to become very much more acute. There seems to be no doubt whatever therefore that the hill people should have the largest possible measure of protection for their land and provisions for the control of immigration into their areas for agricultural or nonagricultural purposes. It seems also clear that the hill people will not have sufficient confidence if the control on such matters is kept in the hands of the Provincial Government which may only be too amenable to the pressure of its supporters. Even the Head of the State under the new Constitution will probably be an elected head, and even though he may be elected also by the votes of the hill people, they may still have the fear that he will give way to the pressure of the plains people on whose votes he may be largely dependent. The atmosphere of fear and suspicion which now prevails, even if it is argued that it is unjustified, is nevertheless one which must be recognized and in order to allay these suspicions and fears, it would appear necessary to provide as far as possible such constitutional provisions and safeguards as would give no room for them. Moreover, in the areas where no right of private property or proprietary right of the chiefs is recognised the land is regarded as the property of the clan, including the forests. Boundaries between the area of one hill or tribe are recognised and violation may result in fighting. Large areas of land are required for *jhum* and this explains in part the fear of the tribesman that its availability will be reduced if incursions by outsiders is permitted. In all the hill areas visited by us, there was an emphatic unanimity of opinion among the hill people that there should be control of immigration and allocation of land to outsiders, and

that such controls should be vested in the hands of the hill people themselves. Accepting this then as a fundamental feature of the administration of the hills, we recommend that the Hill Districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. The only limitation we would place upon this is to provide that the local councils should not require payment for the occupation of vacant land by the Provincial Government for public purposes or prevent the acquisition of private land, also required for public purposes, on payment of compensation.

10. *Forest*: As part of the question of occupation of land, the transfer of the management of land now classed as reserved forest has also been raised. We have recommended that the legislative powers of the Local Councils should not cover reserved forests. While accepting the need for centralized management of the forests, we would strongly emphasise that in questions of actual management, including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the hill people should be taken into account, and we recommend that the Provincial Government should accept this principle as a part of its policy.

11. *Jhuming*: We recommend further that the tribes should have the right of deciding for themselves whether to permit *jhum* cultivation, or not. We are fully aware of the evils of *jhum* cultivation that it leads to erosion, alteration of the rainfall, floods, change of climate etc. The tribes may not always be aware of these dangers but they have definitely begun to realize that settled or terraced cultivation is the better way. The Angami terrace now on a large scale and in most of the hills definite attempts at introducing settled cultivation are being made. The main difficulty however is the fact that all hill areas do not lend themselves to terracing equally well and in some parts, there may be a portion which could be terraced without prohibitive cost, or economically cultivated, by this method. Terracing means labour, a suitable hill side and the possibility of irrigation. When these are not all available it is obvious that the tribes cannot be persuaded to take up terracing and must continue *jhum*. While therefore, we feel strongly that *jhuming* should be discouraged and stopped whenever possible, no general legislative bar can be imposed without taking local circumstances into account. Besides there is a feeling among the tribes that *jhuming* is part of their way of life, and that interference with it is wanton, and done with ulterior motives. The wearing out of that feeling must come from within rather than as imposition from outside which may cause undue excitement among the tribes. We propose therefore that the control of *jhuming* should be left to local councils who, we expect, will be guided by expert advice.

12. *Civil and Criminal Courts*: On the principle that the local customary laws should be interfered with as little as possible and that the tribal councils and courts should be maintained, we recommend that the hill people should have full powers of administering their own social laws,

codifying or modifying them. At present the Code of Criminal Procedure and the Civil Procedure Code are not applicable to the hill districts though officials are expected to be guided by the spirit of these laws. In practice, criminal cases, which are not of a serious nature like murder and offences against the State, are left to the tribal councils or chiefs to be dealt with in accordance with custom. Usually offences are treated as matters for the payment of compensation and fines are inflicted. There appears no harm and a good deal of advantage in maintaining current practice in this respect and we recommend accordingly that all criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and that so far as such offences are concerned the Code of Criminal Procedure should not apply. As regards the more serious offences punishable with imprisonment of five years or more we are of the view that they should be tried henceforth regularly under the Criminal Procedure Code. This does not mean that tribal councils or courts set up by the local councils should not try such cases and we contemplate that wherever they are capable of being empowered with powers under the Criminal Procedure Code this should be done. As regards civil cases (among the tribes there is little distinction between criminal and civil cases) we recommend that except suits arising out of special laws, all ordinary suits should be disposed of by the tribal councils or courts and we see no objection to the local councils being invested with full powers to deal with them, including appeal and revision. In respect of civil and criminal cases where non-tribals are involved, they should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing Circuit Magistrates or Judges.

13. *Other Local Self-Government*: As regards such matters as primary schools, dispensaries and the like which normally come under the scope of local self-governing institutions in the plains it is needless for us to say that the Hill Districts should get all such powers and except in the North Cachar Hills and the Mikir Hills, we are of opinion that the Hill People will be able to take over control of such matters without much difficulty. With a view to providing some training and thereby smoothening the transition, the Chairman of our Sub-Committee has already taken up the question of establishment of councils with powers of local boards. The difference between the councils we contemplate for the Hill Districts and Local Boards will already have been clear from the foregoing paragraphs. It is proposed to entrust these councils with powers of legislation and administration over land, village forest, agriculture and village and town management in general, in addition to the administration of tribal or local law. Over and above these matters the tribes are highly interested in education and feel that they should have full control over primary education at least. We have considered this question in all its aspects and feel that the safe policy to follow in this matter

is to leave it to the local councils to come to a decision on the policy to be followed. We recommend that primary education should be administered by the Local Councils without interference by the Government of Assam. The Assam Government will however always be available to provide such advice and assistance as the Local Councils may require through its Education Department particularly with reference to the linking up of primary with secondary education. As regards secondary school education we do not consider that the Hill People in general are able to look after this subject themselves nor do we consider that this stage should be left without some integration at least with the general system of the Province. There is of course no objection to Local Councils being made responsible for the management of secondary schools where they are found to have the necessary material. But we consider that no statutory provision for this is necessary and that it should be open to the Council and the Government of Assam by executive instructions to make the necessary arrangements. The Local Councils will have powers of management in all other matters usually administered by local boards and we consider that on account of the special circumstances in the hills the councils should have powers to make their own administrative regulations and rules. We expect however that in all matters, particularly those involving technical matters like the management of dispensaries or construction of roads the Local Councils and their staffs will work under the executive guidance of the corresponding Provincial Department.

For the Mikir and the North Cachar Hills, we recommend that the necessary supervision and guidance should be provided for a period of six years which we expect will be the term of two councils by the appointment of the District or Sub-Divisional Officer, as the case may be, as *ex-officio* President of the Council with powers, subject to the control of the Government of Assam, to modify or annul resolutions of the Council and to issue instructions as he may find necessary.

14. *Finance—(a) Powers of the Council:* The next question we propose to consider is finance. A demand common to the Naga Hills, the Khasi and Jaintia Hills, the Garo Hills and the Lushai Hills is that all powers of taxation should vest in the National Councils. The National Conference of the Garo and of the Khasi and Jaintia Hills suggested a contribution to the provincial revenues or a sharing of certain items. If this were accepted even the Centre would have no powers to levy finances in these areas. Suggestions regarding contribution to provincial revenues are obviously based on the assumption that the district, in addition to what it needs for its own expenditure, will have a surplus to make over to the Provincial Government. In the case of the Garo Hills, it was suggested that the abolition of zamindari rights in that area would result in a considerable augmentation of the revenues of the district which would then be able to spare a certain sum to the Provincial Government, and generally the idea seems to be that given sufficient powers the districts will be able to increase their revenues by

exploitation of forests, mineral and hydro-electrical potentialities. Not only do some of the districts feel that they will have plenty of money in due course but the demand for all powers of taxation is based to a large extent on the fear that if the Provincial Government has those powers they may not get a fair deal and there may be diversion of money to other districts. Districts which, on the other hand, feel that they do not command potential sources of revenue or at least realize that the development of the resources will take time during which they remain deficit can only make a vague demand for allocation of funds from a benevolent Province or Centre to supplement local resources.

The question of finance and powers of taxation in an atmosphere of suspicion and fear is not an easy one. Any surplus district is likely to examine the provincial expenditure with a jealous eye to find out whether it gets a good share of expenditure for its own benefit or not. The extreme case is the expectation or demand that all the revenues derived from a particular district must be spent within that district itself. It is obvious however that where different districts are functioning under a common Provincial Government, the revenues of the whole area become diverted to a common pool from which they are distributed to the best possible advantage of the Province as a whole. Should all powers of taxation and appropriation of revenues be placed in the hands of the hills districts, the plains districts will not fail to make a similar demand, and if they do, there would be little justification to refuse it to them. The concession of such a demand to the various districts virtually amounts to breaking up the provincial administration. Besides, giving unregulated powers of taxation in general to small units is undesirable as it would result in different principles, perhaps unsound principles, being adopted in different places for purposes of taxation and in the absence of coordination and provincial control, chaos is more likely than sound administration. Further it is obvious that a local council and a local executive would be much more susceptible and amenable to local pressure and influence than either the Provincial Government or its executive and will therefore not find it possible to undertake measures of taxation which the Province as a whole can. Even if taxes can be adequately resorted to by the local council, the proposal that an appropriation could be made for the provincial revenues does not sound practicable, for what the quantum of that will be is to be determined only by the National Council and it is quite obvious that the Council will decide the quantum from the point of view of its own need rather than the needs of the Province as a whole. The areas which feel that they have large potential sources of revenue must not forget that their demands for educational and other development are also very large and expanding. Various other factors such as the efficiency of tax collection and the cost of collecting staff have to be taken into consideration and we are of the view that the only practicable way is to allocate certain taxes and financial powers to the Councils and

not all powers of taxation. Accepting this conclusion then we can consider what powers they should have. It goes without saying that they should have all the powers which local bodies in a plains district enjoy and we recommend that in respect of taxes like taxes on houses, professions or trades, vehicles, animals, octroi, market dues, ferry dues and powers to impose cesses for specific purposes within the ambit of the Councils, they should have full powers. We expect that the Councils will seek the advice of the Provincial Government in exercising these powers but in view of the democratic spirit and nature of tribal life, we do not consider that any control by the Provincial Government which is prescribed by statute is necessary. In addition we would recommend powers to impose house tax or poll tax, land revenue (as land administration is made over to the Councils), levies arising out of the powers of management of village forest, such as grazing dues and licences for removal of forest produce.

(b) *Provincial Finance*: There is no doubt that for some time to come the development of the hills must depend on the rest of the Province and they will be regarded as "deficit areas". As their development must be regarded as a matter of urgency considerable sums of money will be required but it is equally certain that measures of development are needed in other districts also and the claims of the hills will not find a free field. The expenditure on the excluded areas has so far been a non-voted charge on the provincial revenues but unless it is provided in the Constitution that sums considered necessary by the Governor for the hills will be outside the vote of the Legislature we have to consider how the provision of adequate revenues can be secured. In this connection, we would point out the admission in the Factual Memorandum* received from the Government of Assam that while the excluded areas have benefited by the provision in the Government of India Act regarding them, the partially excluded areas in respect of which the funds are subject to the vote of the Legislature have suffered greatly. In particular, the position of the Mikir Hills seems to be a bad example. Here, only a small proportion of the revenue derived from the area which contains rich forests is utilised in the district and the position in respect of provision of schools, medical facilities etc. is unsatisfactory. We have noted the views of witnesses from the various political organizations that there is a lot of goodwill among the plains people towards the tribes but we feel that a more concrete provision is necessary as practical administration must be taken into account. It is admitted all round that the development of the hills is a matter of urgency for the Province as a whole and there should therefore be a good measure of support for a specific provision.

Coming to the actual provision to be made, it has been suggested in some quarters, that the revenue to be spent within a hill district should be earmarked by provision in the Constitution and should form a definite

*Not reproduced.

proportion of the revenues of the Province. This, in our opinion, is an impracticable proposition since any statutory ratio is invariable for a number of years and there are no simple considerations on which it can be based. If it is based on the population, it is obvious that the expenditure would be totally inadequate, for the hill areas are generally sparsely populated. On the other hand, if a certain stage of development has been reached, the provision of funds on the basis of area may amount pampering the tracts, while revenue is needed elsewhere. We have no doubt that the fixation of a rigid ratio by statute would not be suitable for the Provincial Government to work on and may not be in the interests of the hills themselves. We feel that placing the sums outside the vote of the Legislature is likely to be distasteful to the Legislature and contrary to the democratic spirit and proceed therefore to consider an alternative.

It appears to us that the main reason why the needs of the hills are apt to be overlooked is due to the clamour of more vocal districts and the facts that there is little attention to or criticism of the provisions made for the hills, which in the case of voted items are merged in general figures. If therefore a separate financial statement for each such area showing the revenue from it and the expenditure proposed is placed before the Legislature, it would have, apart from the psychological effect, the advantage that it would draw attention specifically to any inadequacy and make scrutiny and criticism easy. It can of course be objected that criticism may be ignored and that the separate statement may therefore not serve any really useful purpose, but we nevertheless recommend the provision of a separate financial statement as likely to fulfil its purpose. We also recommend that the framing of a suitable programme of development, should be on the Government of Assam, either by statute or by an Instrument of Instructions, as an additional safeguard.

(c) *Central Subventions* : While the Province may be expected to do its best to provide finances to the limit of its capacity, it seems to us quite clear that the requirements of the hill districts, particularly for development schemes, are completely beyond the present resources of Assam. Though the districts are more developed than the frontier tracts in respect of which the Central Government has recognized the need for special grants for development, the position of the hill districts in comparison with the plains districts is not radically different. The development of the hill districts should for obvious reasons be as much the concern of the Central Government as of the Provincial Government. Bearing in mind the special position of this Province in respect of sources of Central revenue, we consider that financial assistance should be provided by the Centre to meet the deficit in the ordinary administration of the districts on the basis of the average deficit during the past three years and that the cost of development schemes should also be borne by the Central Exchequer. We recommend statutory provisions accordingly.

(d) *Provincial Grants for the Local Councils* : Some of our coopted

members have expressed the apprehension that the sources of revenue open to them may not provide adequate revenue for the administration of the District Council, particularly where there are Regional Councils. We have not made a survey of the financial position of the new councils and their requirements in the light of the responsibilities imposed on them but we recognize their claim for assistance from general, provincial revenues to the extent that they are unable to raise the necessary revenue from the sources allotted to them for the due discharge of their statutory liabilities.

15. *Control of Immigration*: The hill people, as remarked earlier, are extremely nervous of outsiders, particularly non-tribals, and feel that they are greatly in need of protection against their encroachment and exploitation. It is on account of this fear that they attach considerable value to regulations like the Chin Hills Regulations under which an outsider could be required to possess a pass to enter the hill territory beyond the Inner Line and an undesirable person could be expelled. They feel that with the disappearance of exclusion they should have powers similar to those conferred by the Chin Hills Regulations. The Provincial Government, in their view, is not the proper custodian of such powers since they would be susceptible to the influence of plains people. Experience in areas inhabited by other tribes shows that even where provincial laws conferred protection on the land they have still been subjected to expropriation at the hands of money lenders and others. We consider therefore that the fears of the hill people regarding unrestrained liberty to outsiders to carry on money lending or other non-agricultural professions is not without justification and we recognize also the depth of their feeling. We recommend accordingly that if the local councils so decide by a majority of threefourths of their members, they introduce a system of licensing for money lenders and traders. They should not of course refuse licences to existing money lenders and dealers and any regulations framed by them should be restricted to regulating interest, prices or profit and the maintenance of accounts and inspection.

16. *Mines and Minerals*: The present position is that except in relation to the Khasi States all powers are vested in the Provincial Government. The hill people strongly desire that revenues accruing from the exploitation of minerals should not go entirely to the Provincial Government and that their Council should be entitled to the benefits also. In order to ensure this they demand that control should be vested in them in one way or another. We have considered this carefully keeping particularly in mind that the Khasi Hill States are now entitled to half the royalties from minerals and feel that the demand of the hills should be met, not by placing the management in their hands, but by recognizing their right to a fair share of the revenue. The mineral resources of the country are limited and it is recognized by us that the issue of licences and leases to unsuitable persons is likely to result in unbusinesslike working and devastation. We consider that the best policy is to centralize the management of mineral resources in the hands of the

Provincial Government subject to the sharing of the revenue as aforesaid and also to the condition that no licences or leases shall be given out by the Provincial Government except in consultation with the local council.

17. *Legislation* : The position under the Government of India Act, 1935 has already been described. It has been argued in some quarters that no Provincial legislation should be applicable to the hills except with the approval of the hill council. This, we consider, is a proposition which cannot be acceded to without reservations. It is true that no legislation is now applicable without a notification by the Governor but the Governor in practice would apply the legislation unless there is a reason why it should not be applied, while the Council would probably be guided by other considerations. There are many matters in which the Legislature has jurisdiction which have nothing to do with special customs in the hills and to provide that such legislation should not apply directly would only amount to obstruction or delaying the course of legislation which ought to be applied. It may also frustrate the application of a uniform policy through the whole Province and subject everything to the limited vision of a local council. The hill districts will of course have their representatives in the Provincial Legislature and we feel that a bar should be placed only in the way of Provincial legislation which deals with subjects in which the hill councils have legislative powers or which are likely to affect social customs and laws. We consider therefore that there is no need for a general restriction and we have provided accordingly for limited restriction in clause L of Appendix A to this Part. We have also included in this draft a clause concerning the drinking of rice-beer which is very much a part of the hill people's life. We feel that the Council should have liberty to permit or prohibit this according to the wishes of the people. We would draw attention to the fact that the rice-beer (Zu or Laopani) is not a distilled liquor and that its consumption is not deleterious to the same extent as distilled liquor consumed by tribes in other areas.

18. *Regional Councils* : The conditions obtaining in the Naga Hills and the North Cachar Hills, in particular, need special provision. The Naga Hills are the home of many different tribes known by the general name of Naga; in the North Cachar Hills, there are Naga, Kachari, Kuki, Mikir and some Khasi or Synteng. Other hills also contain pockets of tribes other than the main tribe. The local organizations referred to earlier have themselves found the need for separate sub-councils for the different tribes and the conditions are such that unless such separate councils are provided for the different tribes they may not only feel that their local autonomy is encroached upon but there is the possibility of friction also. We have therefore provided for the creation of Regional Councils, if the tribes so desire. These Regional Councils will have powers limited to their customary law and management of their land and villages. We also propose that the Regional Councils shall be able to delegate their powers to the District Councils.

19. *Emergency Provisions* : The picture drawn thus far is therefore that of an autonomous council for the district with powers of legislation over the land, village, forests, social customs, administration of local law, powers over village and town committees, etc., with corresponding financial powers. These are far in excess of the powers of local boards. What if the Council or the executive controlled by it should misuse the powers or prove incapable of reasonably efficient management? Some of the hill districts are on the borders of India. What if their acts prove prejudicial to the safety of the country? Experience all over the country indicates that local bodies sometimes mismanage their affairs grossly. We consider that the Governor should have the power to act in an emergency and to declare an act or resolution of the Council illegal or void, if the safety of the country is prejudiced, and to take such other action as may be necessary. We also consider that if gross mismanagement is reported by a Commission, the Governor should have powers to dissolve the Council subject to the approval of the Legislature before which the Council, if it so desires, can put its case (*see* Clause Q of Appendix A).

20. *The Frontier Tracts*—(a) *Central Administration recommended* : We have indicated the difference between the Frontier Tracts and other Hill Areas already. It is clear that the legal position on the Balipara and Sadiya Frontier Tracts is that they are part of the Province right up to the MacMahon Line. Regular provincial administration is however not yet possible (except perhaps in the plains portions before the Inner Line) on account of the circumstances prevailing there. The policy followed in these tracts as well as on the Tirap Frontier (where there is no delineated frontier with Burma yet) and the Naga Tribal Area is that of gradually extending administration. We recommend that when the Central Government which now administers these areas (and which we consider it should continue to do with the Government of Assam as its agent) is of the view that administration has been satisfactorily established over a sufficiently wide area, the Government of Assam should take over the administration of that area by the issue of a notification. We also recommend that the pace of extending administration should be greatly accelerated and that in order to facilitate this, steps should be taken to appoint separate officer for the Lohit Valley, the Siang Valley and the Naga Tribal area which at present is in the jurisdiction of two different officers (the Political Officer, Tirap Frontier Tract and the Deputy Commissioner, Naga Hills District). We have provided that the administration of the areas to be brought under the Provincial administration in future should also be similar to that of existing hill districts.

(b) *Lakhimpur Frontier and Plains Portions* : Regarding the Lakhimpur Frontier Tract, it appears to be the view of the External Affairs Department that this tract does not differ from the plains "and need not be considered in relation to the problems of the hill tribes." Our information goes to show that a portion of the Lakhimpur Frontier Tract was recently (during the war)

included in the Tirap Frontier Tract. The view of the Political Officer regarding this portion differed from that of other witnesses and the circumstances here seem to need closer examination, as the Political Officer has stated that the area is inhabited by tribes people. There are certain Buddhist villages inhabited by Fakials who should be brought into the regularly administered area if possible. About the Lakhimpur Frontier Tract which is under the Deputy Commissioner Lakhimpur we have no hesitation in recommending that it should be attached to the regular administration of the district. The report of the Deputy Commissioner produced before us in evidence is clear on the point. We also conclude from the evidence collected at Sadiya that the Saikhoaghat portion of the excluded area south of the Lohit river and possibly the whole of the Sadiya plains portion up to the Inner Line could be included in regular administration, but feel that the question needs more detailed investigation and recommend that it should be undertaken by the Provincial Government. The portion of the Balipara Frontier Tract round Charduar should be subjected to a similar examination, and the headquarters of the Political Officer of this tract should be shifted into the hills as early as possible.

(c) *Posa Payments* : Certain payments are being made at present to the tribes on the North East Frontier. In the Balipara Frontier Tract payments called *posa* which total in all to about Rs. 10,000 per year, and certain customary presents, are paid. These are vestigial payments of sums which the tribes used to claim in the days of the Ahom kings whether by way of *quid pro quo* for keeping the peace on the border and not raiding the plains or in recognition of a customary claim on the local inhabitants or territory. On the Tirap Frontier a payment of Rs. 450 per year is made to the Chief of Namsang as lease money for a tea garden. We have considered the question whether these payments should be continued in view of the costly development schemes being undertaken, and have come to the conclusion that it would be a mistake to stop them. The effect upon the tribes of such a step would be the feeling that the first act of the new Government was adverse to them and the result of any disaffection in this area might seriously jeopardise our aims of establishing administration and bringing the tribes, who are well disposed at present, into the fold of civilization within our boundaries. The payments are negligibly small in comparison with the large sums of money required for these areas and we recommend that they should continue unchanged at any rate till there is a suitable opportunity for a review of the position.

21. *Representation—(a) Adult Franchise* : The partially excluded areas are already represented in the Provincial Legislature. In the Garo Hills and Mikir Hills the franchise as already stated is a restricted one. The excluded areas have no representation at present. So far as the frontier tracts tribal areas are concerned they have no representation and the circumstances are such that until it is declared that an area is or can be brought under

regular administration, representation cannot be provided. We are of opinion that examination should be made as soon as possible of this question in view of the very clear desire expressed by the Abor, Hkampti and others for representation. Meanwhile, we are of the view that there is no longer any justification for the exclusion of the Naga, Lushai and North Cachar Hills and that these areas should be represented in the Provincial Legislature. The restriction on the franchise in the Garo and Mikir Hills should be removed and, if there is universal adult franchise elsewhere, that system should be applied to all these hills. We would note here that our colleagues from the Lushai Hills expressed some doubts about the feasibility of adult franchise in the Lushai Hills and seemed to prefer household franchise. We do not anticipate any real difficulty in adult franchise here if it is feasible elsewhere but would recommend that the position of the Lushai Hills may be considered by the appropriate body which deals with the question of franchise.

(b) *Provincial Representation*: As regards the number of representatives of the Hills Districts in the Provincial Legislature, we are of the view that if the principle of weightage is recognized for any community, the case of the hill people should receive appropriate consideration in that respect. Though we do not propose that there should be any weightage for the hill people as a principle, we are clear that the number of representatives for each of the hill districts should not be less in proportion to the total number than the ratio of the population of the district to the total population even though this may, in some cases, mean a slightly weighted representation in practice. In the Draft Provincial Constitution we find that it is provided that the scale of representation in the Provincial Assembly is not to exceed one representative for every lakh of the population. On this basis, the hill districts would, according to the minimum recommended by us, obtain representation as follows:

	No.	Population
Khasi & Jaintia Hills	2	105,463
Garo Hills	3	223,569
Mikir Hills	2	149,746
Naga Hills	2	189,641
Lushai Hills	2	152,786
North-Cachar Hills	1	37,361
TOTAL	12	858,566

It will be seen that if the total population of the hills is taken, the number of representatives for all the hills will be somewhat in excess of the number which would be arrived at on the basis of one representative for each lakh of the population. We are not only of the view that in the special circumstances of the hills, representatives as recommended by us are necessary to provide proper representation but that the excess should not be adjusted to the detriment of the rest of Assam out of the total number admissible

under clause 19(2) of the Draft Provincial Constitution [Vol. II, Doc. No. 24 (v)]. We have provided accordingly that in reckoning the number of representatives for the rest of Assam, the population and the number of representatives of the hills shall not be taken into account. We contemplate that the Khasi and Jaintia Hills should include the Municipality and Cantonment of Shillong which is at present a general constituency. This will be an exception to the provision barring non-tribals from election in the hill constituencies.

(c) *Federal Legislature* : The total population of the Hills Districts given above clearly justifies a seat for the Hills Tribes in the Federal Legislature on the scale proposed in clause 14(1)(c) of the Draft Union Constitution [Vol. II, Doc. No. 18(iv).]

(d) *Joint Electorate* : The Hills Districts have this simple feature, that their populations are almost entirely tribal. In the Khasi and Jaintia Hills (a pocket of Mikir excepted) in the Garo Hills, the Mikir Hills (some Rengma and Kuki excepted) the population is uniform. In the Naga Hills, among the different tribes like the Angami, Ao, Sema, there is now the beginning of a feeling of unity. The Naga Hills District has a population of 1.85 lakhs and is likely to get two representatives at least which might enable the allocation of one each to the two main centres of Kohima and Mokokchung. In the North Cachar Hills the position is less satisfactory but in all these areas we consider that the electorate should be joint for all the tribes and non-tribals residing there. In view of the preponderance of tribal people we consider that no reservation of seats is necessary and the only condition which we propose is that the constituencies should not overlap across the boundaries of the district (in the case of North Cachar, the subdivision).

(e) *Non-Tribals Barred* : We have considered the question of non-tribals residing permanently in the hills. Some of these have been in residence for more than one generation and may well claim the right to stand for election but we find that the feeling against allowing them to stand for election is extremely strong. It is felt that even though in a predominantly tribal constituency the chances are all in favour of a tribal candidate, the non-tribals, in view of their greater financial strength can nullify this advantage. We recommend therefore that plains people should not be eligible for election to the Provincial Legislature from the hills constituencies.

22. *The Provincial Ministry* : That the hills can already provide representatives who can take part in the Provincial administration is obvious. On four occasions residents of the Khasi Hills have occupied a place in the Provincial Executive Council or Cabinet. The hitherto excluded Lushai and Naga Hills have the same potentiality. With Ministers from the hills in the Cabinet it may be expected indeed that their interests will not be neglected. The doubts raised are : will there necessarily be a Minister from the hills even when a suitable person is available? If not who will look after the interests of the hills? The hill areas contain close upon a million people

and in view of the great importance of the frontier hills in particular, it would be wise of any Ministry to make a point of having at least one colleague from the hills. It is our considered view that representation for the hills should be guaranteed by statutory provision if possible. If this is not possible, we are of the view that a suitable instruction should be provided in the Instrument of Instructions or corresponding provision. The development of the hills however is a matter which requires special attention in the interests of the Province and we feel that if the circumstances necessitate it, the Governor should be in a position to appoint a special Minister who should, if possible, be from among the hill people. In this connection we would refer to the need for a special development plan which we have referred to in Para. 16 (b).

23. *The Services* : A good deal of discussion has centred round the problem of providing suitable officials for the hills. The number of suitably qualified candidates from the hill people themselves has been inadequate hitherto and the utilization of other candidates has of course been found necessary. No special service has been considered necessary for the hills. On the other hand there has been a certain amount of feeling against the plains officials notably against inferior staff, who have been posted there. We have considered this question carefully and come to the conclusion that no separate service for the hills is desirable or necessary and that there should be free interchange between hill and non-hill officials, at least in the higher cadres of the Provincial and All-India Services. The District Councils will doubtless appoint all their staff from their own people and to prevent interchangeability would be tantamount to perpetuating exclusion as our proposals involved a good deal of separation already. We recommend therefore that while non-tribal officials should be eligible for posting to the hills and *vice versa* they should be selected with care. We also recommend that in recruitment the appointment of a due proportion of hill peoples should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government.

24. *A Commission* : We have referred to the need for special attention to the development of the hills. No statutory provision for the earmarking of adequate funds is considered possible. On the other hand, the Hill Councils recommended by us will have far greater powers than local bodies in plains districts. The hills occupy a position of strategic importance and it is in our opinion of great importance for constant touch to be maintained with the development and administration of these areas. For this purpose we consider that there should be provision for the appointment of a Commission, on which we expect that there will be representatives of the tribes, to examine the state of affairs periodically and report. We recommend that there should be provision to appoint the Commission *ad hoc* or permanently and that the Governor of the Province should have the responsibility and power for appointing it. The report of the Commission

should enable the Government to watch the progress of the development plan and take such other administrative action as may be necessary.

25. *Plains Tribals*: The total tribal population of Assam was shown in the census of 1941 as 2,484,996. The excluded and partially excluded areas contribute to this only 863,248. About 1.6 million tribals therefore live in the plains including those who work as tea-gardens labour. The terms of our enquiry are that we report on a scheme of administration for the tribal and excluded areas and the question of tribes people in the plains strictly does not concern us. Their case will doubtlessly be dealt with by the Minorities Sub-Committee. The population of the plains tribals which is being gradually assimilated to the population of the plains, should for all practical purposes be treated as a minority. Measures of protection for their land are also in our view necessary. At present certain seats are reserved in the Provincial Legislature for them. The question of their representation and protection will we hope be considered by the Minorities Sub-Committee. We have kept in mind however the possibility of there being certain areas inhabited by tribals in the plains or at the foot of the hills whom it may be necessary to provide for in the same manner (see clause A (3) of Appendix A).

26. *Boundaries*: All the hills people have expressed a desire for the rectification of district boundaries so that people of the same tribe are brought under a common administration. We sympathize with this desire but find that it is not only outside our terms of reference but also that it would necessitate an amount of examination which would make it impossible for us to submit our report to the Advisory Committee in time. The present boundaries have, we find, been in existence for many years and we feel that there is time for a separate commission set up by the Provincial Government to work on the problems involved. An exception should however be the case of the Barpathar and Sarupathar mauzas included in the Mikir Hills which the Provincial Government have already decided should be removed from the category of excluded areas and added to the regularly administered areas (see memorandum of Government of Assam). We agree with this recommendation and propose that it should be given effect when the new Constitution comes into force.

27. *Non-Tribal Residents*: In the hill districts, a certain number of non-tribal people reside as permanent residents. They generally follow non-agricultural professions but some cultivate land also. We have recommended that these residents should not be eligible to stand for election to the Provincial Legislature. It is necessary however to provide them with representation in the local council if they are sufficiently numerous. We contemplate that constituencies may be formed for the local councils if the number of residents is not below 500 and that non-tribal constituencies should be formed where this is justified.

28. *Draft Provisions*: For the sake of convenience we have condensed

most of our recommendations into the form of a draft of provisions in roughly legal form and this draft will be found as Appendix A to this part. The draft also contains certain incidental provisions including finance not referred to in this report.

29. *Transitional Provisions*: Reference has been made to the constitutions drafted in the different districts for their local councils. This is of course the expression of the strong desire for autonomy in the hill district. Rather more important however are the individualities of the different tribes and the distinctness of their customs and social systems. If the tribes are allowed to decide the composition and powers of their own councils it will doubtless afford them the maximum of sentimental satisfaction and conduce also to the erection of a mechanism suited without question for their own needs and purposes. While therefore it will be necessary in the existing conditions for the Governor of Assam (as the functionary who will carry on the administration till the new Constitution comes into force) to frame provisional rules for holding elections and constituting the councils, we recommend that the councils thus convened should be provisional councils (one year) and that they should frame their own constitutions and regulations for the future.

APPENDIX A

A. (1) The areas included in Schedule A to this Part shall be autonomous districts.

(2) An autonomous district may be divided into autonomous regions.

(3) Subject to the provisions of section P the Government of Assam may from time to time notify any area not included in the said schedule as an autonomous district or as included in an autonomous district and the provisions of this Part shall thereupon apply to such area as if it was included in the said schedule.

(4) Except in pursuance of a resolution passed by the District Council of an autonomous district in this behalf the Government of Assam shall not notify any district specified or deemed to be specified in the schedule, or part of such district, as ceasing to be an autonomous district or a part thereof.

B. (1) There shall be a District Council for each of the areas specified in Schedule A. The Council shall have not less than twenty nor more than forty members, of whom not less than threefourths shall be elected by universal adult franchise.

Note: If adult franchise is not universally adopted this provision will have to be altered.

(2) The constituencies for the elections to the District Council shall be so constituted if practicable that the different tribals or non-tribals, if any, inhabiting the area shall elect a representative from among their own tribe or group:

Provided that no constituency shall be formed with a total population of less than 500.

(3) If there are different tribes inhabiting distinct areas within an autonomous district, there shall be a separate Regional Council for each such area or group of areas that may so desire.

(4) The District Council in an autonomous district with Regional Councils shall have such powers as may be delegated by the Regional Councils in addition to the powers conferred by this Constitution.

(5) The District or the Regional Council may frame rules regarding (a) the conduct of future elections, the composition of the Council, the office bearers who may be appointed, the manner of their election and other incidental matters, (b) the conduct of business, (c) the appointment of staff, (d) the formation and functioning of subordinate local councils or boards, (e) generally all matters pertaining to the administration of subjects entrusted to it or falling within its powers:

Provided that the Deputy Commissioner, or the Subdivisional Officer, as the case may be, of the Mikir and the North Cachar Hills shall be the Chairman *ex-officio* of the District Council and shall have for a period of six years after the constitution of the Council, powers subject to the control of the Government of Assam to annul or modify any resolution or decision of the District Council or to issue such instructions as he may consider appropriate.

C. (1) The Regional Council, or if there is no Regional Council, the District Council, shall have power to make laws for the area under its jurisdiction regarding (a) allotment, occupation or use for agricultural, residential or other non-agricultural purposes, or setting apart for grazing, cultivation, residential or other purposes ancillary to the life of the village or town, of land other than land classed as reserved forest under the Assam Forest Regulation, 1891 or other law on the subject applicable to the district: Provided that land required by the Government of Assam for public purposes shall be allotted free of cost if vacant, or if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land; (b) the management of any forest which is not a reserve forest; (c) the use of canal or water courses for the purposes of agriculture; (d) controlling, prohibiting or permitting the practice of *jhum* or other forms of shifting cultivation; (e) the establishment of village or town committees and councils and their powers; (f) all other matters relating to village or town management, sanitation, watch and ward.

(2) The Regional Council or if there is no Regional Council, the District Council shall also have powers to make laws regarding (a) the appointment or succession of chiefs or headmen; (b) inheritance of property; (c) marriage and all other social customs.

D. (1) Save as provided in Section F the Regional Council, or if there is no Regional Council, the District Council, or a court constituted by it in this behalf shall have all the powers of a final court of appeal in respect of cases or suits between parties, all of whom belong to hill tribes, in its jurisdiction.

(2) The Regional Council, or if there is no Regional Council the District Council, may set up Village Councils or Courts for the hearing and disposal of disputes or cases other than cases triable under the provisions of Section F, or cases arising out of laws passed by it in the exercise of its powers, and may also appoint such officials as may be necessary for the administration of its laws.

E. The District Council of an autonomous district shall have the powers to establish or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways and in particular may prescribe the language and manner in which primary education shall be imparted.

F. (1) For the trial of acts which constitute offences punishable with imprisonment for five years or more or with death, or transportation for life under the Indian Penal Code or other law applicable to the district or of suits arising out of special laws or in which one or more of the parties are non-tribals, the Government of Assam may confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case may be on the Regional Council, the District Council, or Courts constituted by them or an officer appointed by the Government of Assam as it deems appropriate and such courts shall try the offences or suits in accordance with the Code of Criminal Procedure or Civil Procedure as the case may be.

(2) The Government of Assam may withdraw or modify powers conferred on

the Regional Council or District Council or any court or officer under this section.

(3) Save as provided in this section the Criminal Procedure Code and the Civil Procedure Code shall not apply to the autonomous districts.

Note : "Special Laws"—Laws of the type of the law of contract, company law or insurance etc. are contemplated.

G. (1) There shall be constituted a District or Regional Fund into which shall be credited all moneys received by the District Council or Regional Council as the case may be in the course of its administration or in the discharge of its responsibilities.

(2) Rules approved by the Comptroller of Assam shall be made for the management of the Fund by the District or Regional Council and management of the Fund shall be subject to these rules.

H. (1) A Regional Council, or if there is no Regional Council the District Council shall have the following powers of taxation:

(a) subject to the general principles of assessment approved in this behalf for the rest of Assam, land revenue,

(b) poll tax or house tax.

(2) The District Council shall have powers to impose the following taxes, that is to say (a) a tax on professions, trades or callings, (b) a tax on animals, vehicles, (c) toll tax, (d) market dues, (e) ferry dues, (f) cesses for the maintenance of schools, dispensaries or roads.

(3) A Regional Council or District Council may make rules for the imposition and recovery of the taxes within its financial powers.

I. (1) The Government of Assam shall not grant any licence or lease to prospect for or extract minerals within an autonomous district save in consultation with the District Council.

(2) Such share of the royalties accruing from licences or leases for minerals as may be agreed upon shall be made over to the District Council. In default of agreement such share as may be determined by the Governor in his discretion shall be paid.

J. (1) The District Council may for the purpose of regulating the profession of moneylending or trading by non-tribals in a manner detrimental to the interests of the tribals make rules applicable to the district or any portion of it: (a) prescribing that except the holder of a licence issued by the Council in this behalf no person shall carry on moneylending, (b) prescribing the maximum rate of interest which may be levied by a moneylender, (c) providing for the maintenance of accounts and for their inspection by its officials, (d) prescribing that no non-tribal shall carry on wholesale or retail business in any commodity except under a licence issued by the District Council in this behalf:

Provided that no such rules may be made unless the District Council approves of the rules by a majority of not less than three fourths of its members:

Provided further that a licence shall not be refused to moneylenders and dealers carrying on business at the time of the making of the rules.

K. (1) The number of members representing an autonomous district in the Provincial Legislature shall bear at least the same proportion to the population of the district as the total number of members in that Legislature bears to the total population of Assam.

(2) The total number of representatives allotted to the autonomous districts (which may at any time be specified in Schedule A) in accordance with sub-section (1) of this Section shall not be taken into account in reckoning the total number of representatives to be allotted to the rest of the Province under the provisions of Section...of the Provincial Constitution.

(3) No constituencies shall be formed for the purpose of election to the Provincial Legislature which include portions of other autonomous districts or other areas nor

shall any non-tribal be eligible for election except in the constituency which includes the Cantonment and Municipality of Shillong.

L. (1) Legislation passed by the Provincial Legislature in respect of—

(a) any of the subjects specified in Section C, or

(b) prohibiting or restricting the consumption of any non-distilled alcoholic liquor, shall not apply to an autonomous district.

(2) A Regional Council of an autonomous district or, if there is no Regional Council, the District Council, may apply any such law to the area under its jurisdiction, with or without modification.

M. The revenue and expenditure pertaining to an autonomous district which is credited to or met from the funds of the Government of Assam shall be shown separately in the annual financial statement of the Province of Assam.

N. There shall be paid out of the revenues of the Federation to the Government of Assam such capital and recurring sums as may be necessary, to enable that Government—(a) to meet the average excess of expenditure over the revenue during the three years immediately preceding the commencement of this Constitution in respect of the administration of the areas specified in Schedule A; and (b) to meet the cost of such schemes of development as may be undertaken by the Government with the approval of the Federal Government for the purpose of raising the level of administration of the aforesaid areas to that of the rest of the Province.

O. (1) The Governor of Assam may at any time institute a commission specifically to examine and report on any matter relating to the administration or generally at such intervals as he may prescribe, on the administration of the autonomous districts generally and in particular on (a) the provision of educational and medical facilities and communications, (b) the need for any new or special legislation and (c) the administration of the District or Regional Councils and the laws or rules made by them.

(2) The report of such a commission with the recommendations of the Governor shall be placed before the Provincial Legislature by the Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken on it.

(3) The Governor may appoint a special Minister for the autonomous districts.

P. (1) The Government of Assam may, with the approval of the Federal Government by notification make the foregoing provisions or any of them applicable to any area specified in Schedule B to this Part, or to a part thereof; and may also, with the approval of the Federal Government, exclude any such area or part thereof from the said schedule.

(2) Till a notification is issued under this Section, the administration of any area specified in Schedule B or of any part thereof shall be carried on by the Union Government through the Government of Assam as its agent.

Q. (1) The Governor of Assam in his discretion may, if he is satisfied that any act or resolution of a Regional or District Council is likely to endanger the safety of India, amend or suspend such act or resolution and take such steps as he may consider necessary (including dissolution of the Council and the taking over of its administration) to prevent the commission or continuation of such act or giving effect to such resolution.

(2) The Governor shall place the matter before the Legislature as soon as possible and the Legislature may confirm or set aside the declaration of the Governor.

R. The Governor of Assam may on the recommendation of a commission set up by him under Section N order the dissolution of a Regional or District Council and direct either that fresh election should take place immediately, or with the approval of the Legislature of the Province, place the administration of the area

directly under himself or the commission or other body considered suitable by him, during the interim period or for a period not exceeding twelve months:

Provided that such action shall not be taken without affording an opportunity to the District or Regional Council to be heard by the Provincial Legislature and shall not be taken if the Provincial Legislature is opposed to it.

Transitional Provisions:

Governor to carry on administration as under the 1935 Act till a Council is set up. He should take action to constitute the first District Council or Regional Council and frame provisional rules in consultation with existing tribal councils or other representative organizations, for the conduct of the elections, prescribe who shall be the office bearers etc. The term of the first Council to be one year.

GOPINATH BARDOLOI, (*Chairman*).

J. J. M. NICHOLS-ROY.

RUP NATH BRAHMA.

A. V. THAKKAR.

SCHEDULE A

The Khasi and Jaintia Hills District excluding the town Shillong.

The Garo Hills District.

The Lushai Hills District.

The Naga Hills District.

The North Cachar Subdivision of the Cachar District.

The Mikir Hills portion of Nowgong and Sibsagar District excepting the mouzas of Barpathar and Sarupathar.

SCHEDULE B

The Sadiya and Balipara Frontier Tracts.

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).

The Naga Tribal Area.

APPENDIX B

COPY OF NOTIFICATION NO. 1-X, DATED THE 1ST APRIL, 1937, FROM THE GOVERNMENT OF INDIA IN THE EXTERNAL AFFAIRS DEPARTMENT

In exercise of the powers conferred by sub-section (1) of section 123, read with sub-section (3) of section 313, of the Government of India Act, 1935, the Governor General in Council is pleased to direct the Governor of Assam to discharge as his Agent, in and in relation to the tribal areas beyond the external boundaries of the Province of Assam, all functions hitherto discharged in and in relation to the said areas by the said Governor as Agent to the Governor-General in respect of the political control of the trans-border tribes, the administration of the said areas and the administration of the Assam Rifles and other armed civil forces.

PART II

The Balipara Frontier Tract: This is the tract between the Subansiri river on the east, Bhutan on the west and the MacMahon Line to the north, with its headquarters at Charduar about 20 miles from Tezpur. It

is included in the Schedule to the Government of India (Excluded and Partially Excluded Areas) Order as an excluded area, but in practice it is administered by the Governor of Assam as the Agent to the Government of India and is treated in this respect as a tribal area. The portion immediately to the north of Charduar and up to the Inner Line is a plains portion the area of which is estimated to be approximately 1,000 square miles. The censused portion of the area was 571 square miles and the population of 6,512 contained only 560 Daffa, the remaining number of 2,323 persons enumerated as Assam tribes consisting of Cachari, Garo, Mikir and Miri. The area beyond the Inner Line is estimated to cover about 11,000 square miles and contain a population of approximately 350,000. For administrative purposes it is at present divided into two parts, the Balipara or Sela Agency and the Subansiri Area under two Political Officers. Particularly in the Subansiri Area there are portions which have not yet been explored by our officers, and the details of the tribes living there are still not fully known. In the Sela area administration has been extended as far as Dirang Dzong and this area contains tribes like the Momba, Sillung, Aka or Rhuso, and the Senjithonji. The Subansiri area is inhabited largely by Daffa (Nisu) and Apatani but large areas have yet to be visited and explored.

In the western portions of the tract the way of life of the tribes is influenced a good deal by Tibetan customs and Buddhist monasteries but in the eastern sector the people are much more primitive. Some terraced cultivation and orange gardens exist but people like the Aka depend on *jhuming*. Literacy among the tribes seems to be very poor in spite of the influence of monasteries. Except among the Momba there is little demand even for education. For their requirements of cloth and salt notably the inhabitants depend upon contact with the plains areas or with the Tibetans. The monastery at Towang exercises considerable influence over the lives of these tribes and puts forward claims to monastic taxation. The tribes keep poultry, pigs, goats and *mithun*. In the olden days some chiefs here apparently used to exercise a kind of right of levying taxes in plains villages. This appears to have been recognized by the Ahom Kings who allowed relief to the people liable to such taxes from other taxes to a corresponding extent. In connection with these levies an agreement* was entered into by the British Government for the payment of an annual subsidy, known as *posa*. Rs. 5,000 are paid to the Talung Dzongpons and the Sat Rajas of Kalaktang and some bottles of rum and cloth also are given. The tribes in return also give certain presents like ebony, a gold ring, two Chinese

*Class IV of Agreement No. XLIV of 1888 with the Kapaschor or Kavatum Akas runs as follows: The "posa" we shall receive from Government is in lieu of the due we formerly levied on the Assamese inhabitants of the plains, and that we have no right to receive any food, service, dues or other token of superiority from any raiyat in British territory..." Aitchison Vol. XII.

cups, two yak tails and two blankets. Similar payments of *posa* are made to the Charduar Bhutia or Sherdukpen Thembangia Bhutia, Aka and certain other tribes. Payments to the Dafla and Miri are however made only to freemen and in all cases cease on the death of the present holder. The total payment of *posa* comes to about 10,000 rupees per year. Maintenance of law and order in this area as well as defence against external encroachment is looked after by the posts occupied by the Assam Rifles.

Though some of the witnesses who appeared before us could speak Assamese and appeared to be intelligent, we are inclined to agree with the Political Officer's view that until the Five Year Plan which provides for an expansion of schools and communications has been given effect, there is likely to be little material in this tract particularly in the Subansiri area for local self-governing institutions. For some time the problems of administration here must remain confined largely to the maintenance of peace among the tribes, prevention of encroachment and oppression by Tibetan tax collectors, extension of communications, and elementary facilities for obtaining medicine and primary education. Tibetan officials are known to have set up trade blocks with a view to compelling trade with Tibet rather than India and the removal of these obstructions is a matter which may involve political contact with Tibetan authorities. As already pointed out large areas are as yet *terra incognita* to our officers and the attitude of the tribes is one of fear or suspicion which may easily turn to hostility. It is clear however that the southern portions of the tract will develop earlier than the northern most portions and administration of the political agency type can therefore be gradually shifted northwards. The Political Officer's view is that the time is not yet ripe for shifting his headquarters from Charduar to a place in the hills. The area round Charduar which is in the plains portion is inhabited mostly by non-tribals or detribalized people of tribal origin. The question of bringing it under regular administration needs therefore to be examined in detail by the Provincial Government. What we contemplate is that areas over which adequate control has been established should be brought under the regular Provincial administration while areas further north remain under the control of the Central Government as at present. The Centre should however administer the tract through the Provincial Government as its agent so that the Provincial Government remains in contact with the administration.

We are also of the view that steps should be taken as soon as practicable to erect boundary pillars on the trade routes to Tibet at places where they intersect the MacMahon Line.

The payments of *posa* represent a small amount and the sentimental value attached to it and the probability that any cessation of it concurrently with the coming into force of the new Constitution would have most undesirable consequences on the attitude of the tribes, should be kept in mind. It should clearly not be discontinued for the present.

2. *The Sadiya Frontier Tract* : The Sadiya Frontier Tract is the tract between the Subansiri river on the west and the boundary of the Tirap Frontier Tract on the north-east. The latter boundary has been adjusted from time to time. The Frontier area comprising the Sadiya and Tirap Frontier Tracts is somewhat in the shape of a parabola which contains the area through which the Brahmaputra river with its tributaries debouches on to the plains. The Sadiya tract may be regarded as falling into two or three distinct portions. To begin with, there is the portion to the west consisting of the Valley of the Dihang or Siang with Abor tribes like Minyong, Bori, Galong, Padam. The Valley of the Dibang in the centre covers the area inhabited by Iduor Chulikata Mishmi, and the Valley of the Lohit is inhabited by Digaru and other Mishmi and certain Hkampti and Miri tribes. Included in these three broad divisions is the plains portion of the tract (which includes Saikhoaghat on the south bank of the Lohit river) which runs up to the foot of the hill (roughly along the Inner Line). As in the case of the Balipara tract, regular administration has yet to be established in portions up to the MacMahon Line, which itself needs to be demarcated by the erection of boundary pillars at least at the points where the trade routes cross into India. The headquarters of the Political Officer is at Sadiya and there is an Assistant Political Officer at Pasighat.

The Assistant Political Officer of the Lohit Valley stays at Sadiya and his jurisdiction includes the Chulikata or Idu Mishmi in the north and the Digaru and others towards the east and south of the tract. There are no easy lateral communications between the Chulikata area and the Lohit Valley proper.

By inhabitants, the hill tract falls broadly into portions inhabited by Abor (Siang Valley) the Chulikata in the Dibang Valley and other Mishmi in the Lohit Valley, and the Hkampti or Shan who are a comparatively civilized tribe following Buddhism. In addition there is the mixed population of the Sadiya portion to the south of Inner Line containing non-tribals and some Miri. Although the Gallong Abor are somewhat different from the Padam and Minyong the languages are practically the same and the whole of the Abor Tract could be regarded as reasonably uniform. The Mishmi area, though it falls into two separate portions along the Dibang and Lohit Rivers respectively, and the tribes do not understand one another's language, could be treated as one. The Hkampti area which is the third one is small and the Sadiya population is a mixed one. The area beyond the Inner Line which is not censused is estimated to contain 250,000 Abor, 40,000 Idu, 25,000 Digaru and Miji and about 2,000 Hkampti. The censused portion is an area of 3,309 square miles with a total population of 60,118 of which 39,974 are of tribal origin.

The total area of the tract may be in the neighbourhood of 15,000 square miles and its development and administration clearly necessitate the subdivision of the tract and the appointment of more officials. In fact the Political Officer has already recommended the division of the tract into

two portions based on Pasighat and Sadiya respectively. This is roughly equivalent to a division into the Mishmi area and the Abor area respectively and the proposals under consideration at present seem to contemplate the posting of a Political Officer at Sadiya for the Mishmi Agency with an Assistant with headquarters at Walong (Lohit Valley) and a second Political Officer at Pasighat (now the headquarters of an Assistant Political Officer). The main reason for keeping Sadiya as the headquarters for the Mishmi Agency would appear to be the lack of lateral communications between the Chulikata area in the Dibang Valley and the Digaru area in the Lohit Valley. It is clear however that Sadiya and the portion up to the Inner Line are in the plains and contain a mixed population. Cultivation in this tract is also settled and the people of the tract desire that it should not continue under the present system of exclusion. Moreover, there is the area occupied by the Hkampti who are settled cultivators professing Buddhism which has also spread a good deal of literacy among them. *Prima facie* there is a strong case for treating the plains portion of the tract as well as the Hkampti portions as regularly administered areas, in the form perhaps of a separate sub-division or district. The distinctness of the Hkampti must however be borne in mind and the area will probably have to be treated as a separate taluq. An early and detailed examination of the whole question is clearly called for. If Sadiya is treated as plain, a suitable headquarters for the Political Officer of the Mishmi area needs to be looked for keeping in mind the difficulties of communications between the Dibang and Lohit Valleys.

With the exception of the Hkampti who are settled cultivators, and may be regarded as comparatively civilized, and a few people in the plains portion who also do settled cultivation, the Abor and Mishmi pursue *jhuming* and appear to exhibit little competence in the art of raising crops. They of course eke out a livelihood by keeping poultry, sheep and *mithun*. The herds of *mithun* kept by these tribes are in fact the occasion for disputes between people as raiding for *mithun* seems to be in this area what head-hunting is in the Naga tribal area. Serious quarrels arising out of raiding for *mithun* may call for the intervention of the Political Officer. The tribes are generally heavily addicted to opium and attempts to keep the growth and consumption of opium in check seem to be meeting with little success. Though we feel that the Abor and Mishmi are people who can be educated and assimilated to civilized administration in a comparatively short time, there is little literacy or education among them at present, and the depth of the area over which control has been established beyond the Inner Line does not seem to be great. Communications are the urgent need so that greater contact is possible even if the lack of education is regarded as no impediment. By the time the five year plan has been worked out (it contemplates the making of a road to Walong and improvement of communications in other respects also) it may be possible to give effect

to the keenly expressed desire among the Abors of a share in the Provincial administration. It is obvious that the pace of establishment of full-fledged administration in this area should be accelerated. A beginning should however be possible by way of political education of the people, if tribal councils are set up to enable the different tribes to come together to discuss matters of mutual interest and understand the problems of administration.

The forests of this tract can produce a good revenue but land revenue in the plains portions amounts to about 50,000 and the poll tax which is also levied in this area amounts to about 15,000. The forest revenue in 1946-47 was 430,000.

3. *The Lakhimpur and Tirap Frontier Tracts*: The exact position, legal and *de facto* is not clear. The Lakhimpur Frontier Tract is mentioned as one of the North-East Frontier Tracts scheduled as an excluded area. No frontier has yet been laid down between Burma and India in this region. There is an area locally known as the Lakhimpur Frontier Tract which is treated as an excluded area with the Deputy Commissioner, Lakhimpur, as the Agent or Political Officer. The Tirap Frontier Tract, which apparently derives its name from the river of that name, is said at present to contain a number of villages added to it from the Lakhimpur Frontier Tract during the war, and the rest of the portion inhabited by Naga tribes towards the Burmese territory. In addition to the Tirap Frontier Tract the Political Officer, whose headquarters are at present in Margherita in Lakhimpur district, is also in charge of a portion of the Naga Tribal Area which stretches along the boundary of the Lakhimpur district till it touches the northern apex of the Naga Hills district boundary and then runs along the eastern boundary of the Naga Hills district towards its southern projection towards Burma. The area of the Lakhimpur Frontier Tract as shown in the census is about 394 square miles. The area of the Tirap Frontier Tract can of course only be guessed as there is no definite boundary with Burma. It may be in the neighbourhood of 4,000 square miles. In population also the tract differs from part to part. The Lakhimpur Frontier Tract differs "in no way from the surrounding plains; possesses none of the characteristics of the hill areas and need not be considered in relation to the problems of the hill tribes". In the portion of the Lakhimpur Frontier Tract which has now been taken into the Tirap Frontier Tract there are several villages inhabited by Kachins and others who are regarded as tribal and pay house tax. In the Tirap Frontier Tract a number of tribes classed as Naga such as Tikak, Yogli, Ranrang, Lungri, Sank-e, Mosang, Morang etc. reside. The whole of the area inhabited by the Naga tribes could appropriately be regarded as part of India since the economic relations of all these tribes are with India and not with any other country. The demarcation of a boundary with Burma is to be taken up therefore on this principle and the question is said to be now under consideration by the Government of India. It is obviously a matter which needs to be expedited.

In the northern portion of the Naga Tribal area (which may be really regarded as part of the Tirap Frontier, since for a considerable distance the boundary of this area runs along with the eastern boundary of Lakhimpur district) there are tribes classed as Konyak Naga and the relations of this area are also with the plains portion of the Lakhimpur district. For instance it is common for tribes from Namsang and Borduria to come frequently to Jaipur for their marketing etc., and a good number of them seem to speak Assamese. The area is thickly populated. The Singtrspoh or Kachins are Buddhists and they had chiefs belonging to the old ruling family before the country was taken over in 1839. The agreements entered into it 1826 and 1836 are a dead letter and though the chiefs are consulted by the Political Officer whenever there is any dispute to be settled or other matter to be dealt with, the Political Officer is being looked up to more and more, and the chief is regarded only by way of being an adviser to the Political Officer.

Agriculture is mostly by the primitive method of *jhuming* and there are no educational facilities. The economic condition of the tract is pretty poor. The Kachins however are settled cultivators and are in a better position than the Naga. In the Naga Tribal Area head-hunting is still practised and slavery also seems to exist.

For the Tirap Frontier Tract also the five year plan approved by the Government of India contemplates the extension of the benefits of administration. The headquarters is proposed to be moved to a place in the interior called Horukhunma and hospitals and schools are to be constructed. Both in the Tirap Frontier Tract and the Naga Tribal Area the policy is just the same, namely, the extension of administration gradually up to the Burma frontier. This policy appears to us to be the correct one to follow, whatever the legal status of the area may be under the Government of India Act. As in the case of the MacMahon Line frontier, all the portions between the Burmese boundary and the administered area of Assam should be merged in Assam as soon as possible and the distinction between tribal area and administered Indian territory abolished.

The Lakhimpur Frontier Tract need no longer be treated as an excluded area. As regards the portions of this tract taken over into the Tirap Frontier Tract the justification for continuing it as a frontier area needs to be further examined and if no difficulty is likely to be caused by the inclusion of the Kachins and other tribes who live there in the Lakhimpur district the area should be merged in the district. In the rest of the area, steps should be taken to organize non-statutory tribal councils, panchayats etc., in anticipation of the time when this tract will be fit for inclusion in the Provincial administration. For the proper administration of the Naga Hills tribal area it would appear desirable to provide more officials, and a separate officer with headquarters as close as possible to the area, if not inside it is necessary. It would appear that there is already sanction for

a separate Subdivisional Officer at Mokokchung under the control of the Deputy Commissioner, Naga Hills district, but the present arrangement by which the tribal area is shared between the Deputy Commissioner, Kohima, and the Political Officer, Tirap Frontier Tract, needs to be further examined. It would perhaps be best to divide the portion into two districts, one which will in due course either merge with the existing Naga Hills district and form a sub-division thereof or be a Konyak district, and another which will form a portion of another district under an officer with headquarters in the present Tirap Frontier Tract.

4. *Naga Hills District*: The Naga Hills District is an area of 4,289 square miles bounded on the east by the Naga tribal area, on the south by Manipur State and on the west by the Sibsagar district. The population was given as 189,641 of which 184,766 or 97.4 per cent were tribal, at the 1941 census. The district is inhabited by a number of Naga tribes notably the Angami, the Sema, the Lhota and the Ao. Of these tribes the Angami are the most numerous and inhabit the area round Kohima, their number at the 1941 census being slightly over 52,000. The Aos are the next numerous numbering over 40,000 and the Semas come third with 35,741. These two tribes inhabit the area round Mokokchung which is a separate sub-division of the district, and the Sema also inhabit the region to the north-west of the Angami country. The tribes speak different languages and their *lingua franca* is Assamese or Hindustani. They have also differing customs and traditions. Areas claimed by the tribe or village are jealously guarded against encroachment and to such an extent in the Naga Tribal Area that a villager seldom ventures outside his village boundary. Within the boundary of the district proper there is generally speaking regular administration though during the war a slightly different atmosphere might have been introduced. Though the percentage of literacy among male Naga is about 6 only, quite a good number of these have received high education. Female literacy among the Naga is however negligible, though in the Mokokchung Sub-division it was found to be nearly four per cent. Literacy seems to be higher in the Mokokchung area than the Kohima area and the demand for education is also keener here. As regards economic circumstances a good deal of terracing is done in the Angami areas and a number of Nagas seem to have taken up non-agricultural occupations—the planting of gardens etc.

It has been mentioned that the district is inhabited by mutually exclusive, diverse tribes. A movement for unification has however been afoot in the last two or three years and a body known as the Naga National Council (with sub-councils of the different tribes) was formed in 1945. Though a non-official political organisation, many of its leaders and members are Government officials and the organisation has also received official recognition locally. Thus the anomalous position of Government servants participating in political activity exists and in part this situation is due to the fact that

the educated, influential and leading elements are Government servants. Though the formation of this council may be taken as an indication that the unity of administration has given a sense of unity to the different tribes it would perhaps be a mistake to suppose that there has been any real consolidation, and the tenacity with which the tribes hold on to their own particular views or traditions is still a potent factor. A notable characteristic of Naga* tribes is that decisions in their tribal councils are taken by general agreement and not by the minority accepting the decisions of the majority. This feature, though perhaps well suited to village areas, may lead to many an unsatisfactory compromise in matters of greater moment.

In June 1946, the Naga National Council passed a resolution expressing their approval of the scheme proposed by the Cabinet Mission in the State Paper of May 16, 1946, and their desire to form part of Assam and India. The resolution protested against the proposal to group Assam with Bengal. This resolution and the feeling which prompted it seems to have held the field throughout 1946 and the Premier of Assam who visited the district in November 1946 was greeted with the utmost cordiality. Early in 1947 the Governor of Assam, Sir Andrew Clow, visited the Naga Hills and advised the Nagas that their future lay with India and with Assam. Subsequently towards the end of February 1947, the Naga National Council passed a resolution in which they desired the establishment of "an Interim Government of Nagas with financial provisions, for a period of ten years at the end of which the Naga people will be left to choose any form of Government under which they themselves choose to live." This resolution was of course completely different from the previous one in that it was based on the idea of being a separate nation and country. Subsequently the Naga National Council sent another memorandum in which they mentioned a "guardian power" without however stating who should be the guardian power, and it was found that they were extremely reluctant to express any choice openly between the three possibilities of the Government of India, the Provincial Government and H.M.G. It would appear that this was the formula on which a general measure of agreement could be obtained among the Nagas since there were clear indications that many of them were inclined to take moderate views more on the lines of the original resolution passed at Wokha but in view of the intransigence of certain other members, probably of the Angami group, they were prevented from doing so.

Subsequent events connected with the visit of H. E. the Governor to the Naga Hills on the 26th of June 1946 show that the Nagas have dropped their extreme demands. The substance of the claims made by the Nagas is now to maintain their customary laws and courts, management of their land with its resources, the continuance of the regulations by which entry and residence in the hills could be controlled and a review of the whole position after ten years.

*Other tribes have this characteristic also in greater or less degree.

5. *Lushai Hills (District) Tract* : This district has an area of 8,142 square miles and lies to the south of the Surma Valley. It forms a narrow wedge-shaped strip of territory about 70 miles wide in the north tapering to almost a point at its southern extremity and separates Burma from the State of Tripura and the Chittagong Hill Tracts of Bengal on the east and south-east respectively. With the exception of a small area at its southern extremity which is inhabited by Lakher tribesmen, the rest of the district is inhabited by the tribes known as Lushai or Mizo and found elsewhere in North Cachar subdivision, and Manipur as Kuki. The communications with the main inhabited areas of Aijal (headquarters) and Lungleh are difficult and there is only a bridal path connecting Aijal with Silchar. From Serang, near Aijal, communication by river, along the Dhaleswari, is possible and Demagiri in the south is connected with Rangamati in the Chittagong Hill Tracts, by the Karnaphuli river. There is also a bridal path connecting Lungleh with Rangamati. The population of this district is 152,786 according to the last census and over 96 per cent of the population is tribal. The district as a whole is hilly, with a general elevation of between 3,000 and 4,000 feet and the slopes are usually quite steep.

Jhuming, with the exception of certain orange gardens, is the common form of cultivation and terracing and wet cultivation present many difficulties. Spinning and weaving is a common cottage industry, and every woman in a Lushai household spins and weaves for the needs of the family. Most attractive tapestry work is done in these hills and the designs make a very colourful display. Much of the weaving and spinning is done however for personal use and not for sale. The degree of literacy in the area is very high the reason for it being probably the fact that a large proportion of the population is Christian and the Sunday Schools have assisted the spread of literacy even among the adult men but, apart from a few Government servants, the number of people following non-agricultural occupations is negligible. The general level of intelligence and civilized behaviour in this area is high and compares favourably with most places in the plains.

There are no local self-governing institutions and village life is to a great extent dominated by the chief who is generally hereditary*. Formerly the number of chiefs was small, probably 50 or 60, but on account of the increase in population and the growth of new villages the present number is over 300. The chiefs settle disputes in the village, make a distribution of land for *jhuming* and generally carry out any orders issued to them by the officials including such work as collection of taxes. Of late the relations between the chiefs and the people have been rather strained, and it would appear that one reason for this is the convening of the so-called District Conference by the Superintendent of the Lushai Hills. The "Mizo Union" was started

*A certain number of non-hereditary appointments have been made of late by the Superintendent.

some time ago by the people (including chiefs also as members) as a non-official organization, with the consent of the Superintendent. This organization seems to have been without a rival to begin with but in 1946 the Superintendent convened the District Conference with a membership of 40 of which 20 were commoners and 20 were chiefs. The District Conference was supposed to be elected by household franchise at the rate of one voter for every 10 houses and in the first conference, the chiefs and the people had separate electorates, that is, the people elected their own representatives and the chiefs theirs. The conference apparently created little enthusiasm and the large representation of chiefs on it must have caused some dissatisfaction. The Superintendent was the President of the conference. Towards October 1946 this conference seems to have broken down and was virtually abandoned. Shortly before the visit of the sub-committee however fresh elections were held by the Superintendent. At this election a change was made in the franchise so that the separate electorate was abolished and chiefs and commoners voted jointly. The ratio of chiefs and commoners was however maintained and on this account the "Mizo Union" decided to boycott the elections with considerable effect on it. In fact it is claimed by the Mizo Union that only two or three hundred voters actually took part in the elections. However this might be, the convening of the District Conference which was claimed to be an elected body obviously brought it into rivalry with the Mizo Union and since the conference was supported by the Superintendent, the Mizo Union incurred official disfavour*. The Superintendent being the President of the conference and the chiefs being largely under official control and influence, there was apparent justification for the suggestion that the District Conference was not representative of the views of the people. In fact the attitude of the Superintendent gave us very good reason to believe that the District Conference was completely dominated by him and was his mouthpiece. The Superintendent himself propounded a scheme before the committee the purport of which was that all local affairs should be managed by a constitutional body elected by the district who would have their own officers appointed by themselves and that the Government of Assam or of the Union should pay only a certain sum of money amounting to the deficit of the district and enter into an agreement regarding the defence of the district and its external relations. To what extent the Superintendent believed that the Lushais could actually administer their own affairs efficiently in every matter other than defence is a matter of some doubt because in answer to a question whether he thought that the whole administration could be managed by them, he replied "I will not guarantee that it could be done". (See Vol. II Evidence.)† In answer to a further

*There were incidents earlier leading to the seizure of the Mizo Union's funds by the Superintendent.

†Not printed.

question he gave it as his opinion that it would not be very long before the district could manage its own affairs and that the length of the period would depend upon whether there was interference from outside by bodies that were too powerful or not. The general impressions gathered by us during our discussions with representatives of various interests in the district was that, with the exception of a few people who were under the influence of the Superintendent, the attitude of the rest was reasonable, and it would not be long before disruptive ideas prevailing now completely disappear.

The main emphasis in the demands of the Lushais was laid on the protection of the land, the prevention of exploitation by outsiders and the continuance of their local customs and language.

The district has a revenue of about 2 lakhs and an expenditure amounting to about six lakhs. A high school has recently been started. The Assam Rifles are stationed at Aijal and Lungleh.

6. *The North Cachar Hills Sub-Division*: This area is a sub-division of the Cachar district whose headquarters is Silchar. It is an area of 1,888 square miles inhabited by 37,361 people of which 31,529 were tribals, the remainder being accounted for by the various railways and other colonies of outsiders. The main feature of this sub-division is that it contains a number of different tribes namely the Cachari, the Naga, the Kuki and Mikir; a small number of Synteng or Khasi also inhabit the area. The general characteristic is that the tribes named above, with the exception of one or two villages of Naga inhabited by a few Kuki, live in areas of their own and there is no intermingling of population of the different tribes in the villages. The Zemi Naga are however not in a compact block and live in three different portions with Kuki or Cachari in the intervening portions. The Mikir form a pocket to the north-west of the area and the Cachari roughly inhabit the central and south-west portions. The Cachari are the most numerous of the tribes with a population of about 16,000; the Kuki are about 7,000 and the Zemi about 6,000. Relations between the Kuki and the Naga are said to be unsatisfactory though for the time being relations appear to be good. It may be mentioned here that the Zemi have still unpleasant memories of bad treatment by the Angami of the Naga Hills District and there is not much love lost between them though they showed themselves responsive to instructions given by certain Angami officials from Kohima.

There is little literacy in this area and cultivation is by the primitive method of *jhuming*. Unlike the Angami areas in the Naga Hills District, the hillsides here are much steeper and, apart from rainfall, there is no scope for irrigation. Then again, unlike the Angami, the Zemi live in small hamlets and it is not an easy matter to find adequate labour for the introduction of terracing and wet cultivation. A certain number of orange gardens have been planted and potatoes have been introduced into the district. There

is little doubt that with the encouragement of education, for which there is a demand the tribes can be brought up to the level of the others but at present while they are quite capable of understanding the broad outlines of the democratic mechanism and can take part in elections, it is unlikely that they will be able to manage a body like a local board without official aid. The main difficulty in this portion is however that caused by the existence of different tribes who have little feeling of solidarity among themselves. Quite recently a sort of tribal council to bring together the different tribes with a view to educating them in local self-government was undertaken by the Sub-Divisional Officer, but the Mikir influenced as they were by people from the Mikir Hills who wanted an amalgamation of the Mikir area with the Mikir Hills portion, would not cooperate in the joint council. Then there is the question of choosing a common representative. The Cachari being the most numerous have some advantage and the area is obviously too small for the representation of more than one in the Provincial Legislature. It is likely however that there will be a sufficient combination for the purpose of electing a common representative. Since this area cannot share a representative with plains areas, the population of 37,000 will have to be provided with a representative of their own. If however a local self-governing body is formed in this district it is clear that there will have to be some kind of regional arrangement by which the different tribes have their own separate councils which will then come together in the form of a council for the whole sub-division.

Like most other hill districts this area is also a deficit area. The same feeling which exists in other areas about safeguarding land and protection of the land from occupation by outsiders as well as excluding them also from other activities which may lead to exploitation prevails here. One feature of this area is that among the different tribes it is Hindustani which is more of a common language than Assamese.

7. *Khasi and Jaintia Hills*: This partially excluded area consists of the Jaintia Hills formerly forming part of the Kingdom of the old Jaintia kings and now forming the Jowai Sub-division, and some 176 villages in the Sadar Sub-division. The Khasi and Jaintia Hills as a whole consist of a large territory between the Garo Hills on the west and the North Cachar Hills and the Mikir Hills on the east. The Khasi States which consist of 1,509 villages cover the western portion of the Hills and the British villages are interlaced with them. The people of the Jowai Sub-division are known as Synteng or Pnar and speak a dialect but with the exception of a small number of Mikir on the northern slopes of the Hills, the whole population of these Hills may be regarded as uniform. Unlike their neighbours who speak Tibeto-Burmese tongues the Khasi form an island of the Mon Khmer linguistic family.

The Khasi States, which are about 25 in number, are some of the smallest in India. The largest States are Khyriem, Myllem and Nongkhlaio and the

smallest is Nonglewai. The system of inheritance of chiefship is described as follows:

The chiefs of these little States are generally taken from the same family inheritance going through the female. A uterine brother usually has the first claim and failing him a sister's son. The appointment is however subject to the approval of a small electoral body, and the heir-apparent is occasionally passed over, if for any reason, mental, physical or moral, he is unfit for the position. The electors are generally the *mantries* or *lyngdohs* the representatives of the clans which go to form the State.

In Langrin, the appointment is by popular election. In some of the States, if the *Mantries* are not unanimous in their choice, a popular election is held. The chiefs are known as Siem in most States but in some they are called Sardar, Lyngdoh in three of them and Wahadadar in one. The functions of the chiefs are largely magisterial and in the discharge of their duties they are assisted by their *Mantries*. The relations between them and the Government of India are based upon *sanads* issued to them. For specimen of these *sanads* Volume XII of Aitchison's "Treaties, Engagements and Sanads" may be referred to. Under the terms of the *sanad*, the chiefs are placed completely under the control of the Deputy Commissioner and the Government of India and waste lands as well as minerals are ceded to the Government on condition that half the revenue is made over to the Siems. Their criminal and civil authority are also limited. The *sanads* do not mention the right to levy excise on liquor and drugs and presumably the Siems have that right. Though the States are not in the partially excluded areas, the main interest attaching to them is the fact that there is an understandable feeling among the people of the States that there should be a federation between the States and the British portions so that all the Khasi people are brought under a common administration. The position is that in the British areas, though there is now the franchise and a member is sent to the Provincial Legislature, there is no statutory local body for local self-government. The States, on the other hand, enjoy certain rights, as stated above, and the problem is to bridge the gap.

The Khasi and Jaintia Hills have the advantage of the Provincial headquarters, Shillong, being situated among them. Literacy among the Khasi amounts to about 11 per cent with a male literacy of 19 per cent. The district is already enfranchised and the special features which it is desirable to bear in mind is the matriarchal system prevalent there, the democratic village systems and other special customs and traditions. Cultivation in the Khasi and Jaintia Hills may be regarded as comparatively advanced. There is a good deal of wet cultivation and the culture of oranges and potatoes is common. The Khasi have also taken to non-agricultural professions much more than other hill people.

8. *The Garo Hills*: The Garo Hills which is the butt-end of the range of hills which constitute the watershed for the Brahmaputra and the Surma

Valleys. The Garo who inhabit these hills are people of Tibeto-Burmese origin and are similar to the Cachari. The area of the district is 3,152 square miles and it is inhabited by a population of 233,569 of which 198,474 or nearly 85 per cent are tribals, mainly Garo. The Garo inhabit not only the district which bears their name but there are villages inhabited by them in Kamrup and Goalpara also and portions of the Mymensingh district of Bengal joining the Garo Hills is inhabited by thousands of Garo.

The Garo are a people with a matriarchal system like the Khasi. The tribal system of the Garo is highly democratic and the whole village with the Nokma as the head or chairman takes part in the council if any matter is in dispute. The district as a whole is pretty backward with only about five literates in a hundred and lacking in communications. Christian missions have been active and there has been a certain amount of conversion but on the whole the Garo even while being able to produce a fair number of intelligent and literate people have yet to come up to the degree of the Khasi or the Lushai. Franchise at present is restricted to the Nokma but it is unlikely that there will be any great difficulty in working a franchise system based on adult franchise than in most other areas.

In the Garo Hills also the sole occupation is agriculture and though garden crops are grown round the huts sometimes, the method is largely that of *jhuming*. The people weave their own clothes but there is no important cottage industry. The area is however much more in contact with the plains on either side of it than areas like the Lushai Hills or the Naga Hills.

The Garo are keenly desirous of uniting all the villages inhabited by Garo whether in the plains of Assam or in the Mymensing district of Bengal under a common administration. The Bengal district of Mymensingh seems to be the home of about 48,000 Garo most of whom are on the fringe of the Garo Hills, and the question of rectification of the boundary to include this area in the Garo Hills district of Assam definitely deserves consideration. A similar examination is necessary in respect of other Garo villages in the Kamrup and Goalpara districts of Assam.

9. *The Mikir Hills* : The partially excluded area of the Mikir Hills with an area of about 4,400 square miles and a population of about 150,000 persons is split up between two districts namely Nowgong and Sibsagar. The Mikir Hills form an area rather irregular in shape into which there projects an enclave of the Assam Valley. The western extremity of the partially excluded area actually reaches a point in the Khasi Hills and eastwards it extends to point not far from Dimapur while to the north it approaches Golaghat. It is clear that the irregular shape of this area makes the administration from centres outside the area rather inconvenient which apparently is the reason why the district has had to be split up

between two plains districts. Being a rather sparsely populated* area with rather less than 50 persons to the square mile and containing no communications other than the railway passing through it, it has apparently not been considered suitable for treatment as a separate district. The Provincial Government has at present under consideration a proposal for the making of the whole of the Mikir Hills area into a separate sub-division, perhaps on the analogy of the North Cachar Hills Sub-division. Divided between two districts as it is and consisting of inhospitable territory in which *jhuming* is the only method of cultivation practised while malaria takes its toll, it has been sadly neglected in many ways and special steps are necessary for its development. Very obviously the present state of affairs where it is divided between two districts cannot continue if the area is to be developed and it should be made either a district or a sub-division with its headquarters somewhere in the middle of the bend so that it is accessible from both extremities. The area includes certain mouzas Barapathar and Sarupathar inhabited very largely by non-tribals which even at the time of the constitution of the partially excluded areas were considered doubtful areas for exclusion, and the Provincial Government have since taken a decision that the areas should be added to regularly administered portions as soon as possible.

The Mikir are probably the most backward of all the tribes of the Assam Hills though this backwardness is probably not their own fault. There are pockets of Mikir in the North Cachar and the Khasi Hills like the Garo and Khasi the Mikir desire the consolidation of their own tribesmen under a single administration. Unlike the Lushai or the Khasi Hills, Christianity has made little progress here.

While the special customs of the Mikir, their addiction to *jhuming* cultivation etc. necessitate that an arrangement must be made by which they are able to maintain their own system, the Mikir Hills at present find representation in the Provincial Legislature although through the restricted franchise of the headmen, and opinion generally is that there is no objection to the extension of adult franchise in the area. The sparse population may give rise to certain practical difficulties in organising elections there but it would appear that these are not insurmountable.

The Mikir Hills are inhabited to some extent by Kachari (about 2000) Rengma Naga and a few Kuki, but on the whole, the population may be regarded as uniform.

In view of the comparatively backward state of the Mikir and the fact that there are no self-governing institutions of a statutory type locally, it is necessary in introducing institutions of this kind to arrange for a period of supervision and guidance. In other words, any local council set up in

*It may be noted however that the Lushai Hills are also sparsely populated and there is no railway running through it.

the hills should at first be subject to the control of the local, District or Sub-Divisional Officer.

G. N. BARDOLOI (*Chairman*).

J. J. M. NICHOLS-ROY.

RUP NATH BRAHMA.

A. V. THAKKAR.

SUMMARY OF RECOMMENDATIONS OF THE ASSAM SUB-COMMITTEE*

District Councils should be set up in the hill districts (*see* Section B of Appendix A) with powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. This is subject to the proviso that no payment would be required for the occupation of vacant land by the Provincial Government for public purposes and private land required for public purposes by the Provincial Government will be acquired for it on payment of compensation [Paragraph 9 and Section C(1) of Appendix A].

2. Reserved forests will be managed by the Provincial Government. In questions of actual management including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the hill people should be taken into account [Para. 10].

3. On account of its disastrous effects upon the forest, rainfall and other climatic features, *jhuming* should be discouraged and stopped wherever possible but the initiative for this should come from the tribes themselves and the control of *jhuming* should be left to the local councils. [Para. 11 and Section C of Appendix A].

4. All social law and custom is left to be controlled or regulated by the tribes [Para. 12 and Section C(2) of Appendix A]. All criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and the Code of Criminal Procedure will not apply to such cases. As regards the serious offences punishable with imprisonment of five years or more they should be tried henceforth regularly under the Criminal Procedure Code. To try such cases, powers should be conferred by the Provincial Government wherever suitable upon tribal councils or courts set up by the district councils themselves.

All ordinary civil suits should be disposed of by tribal courts and local councils may have full powers to deal with them including appeal and revision.

Where non-tribals are involved, civil or criminal cases should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing circuit

*The references in this Summary are to paragraphs and Appendix A of Part I, pp. 683-713 *ante*.

magistrates or judges [Para. 12 and Sections D and F of Appendix A].

5. The District Councils should have powers of management over primary schools, dispensaries and other institutions which normally come under the scope of local self-governing institutions in the plains. They should have full control over primary education. As regards secondary school education, there should be some integration with the general system of the Province and it is left open to the Provincial Government to entrust local councils with responsibility for secondary schools wherever they find this suitable [Paragraph 13 and Section E of Appendix A].

For the Mikir and North Cachar Hills the District or Sub-Divisional Officer, as the case may be, should be *ex-officio* President of the local council with powers, subject to the control of the Government of Assam, to modify or annul resolutions or decisions of the local councils and to issue such instructions as may be necessary [Paragraph 13 and Section B(5) of Appendix A].

6. Certain taxes and financial powers should be allocated to the councils. They should have all the powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest [Section H of Appendix A and Para. 14(a)].

Statutory provision for a fixed proportion of Provincial funds to be spent on the hill districts is not considered practicable. A separate financial statement for each hill district showing the revenue derived from the district and the expenditure proposed on it is recommended. The framing of a suitable programme of development should be enjoined either by statute or by Instrument of Instructions [Section M of Appendix A and Para. 14(b)].

It is quite clear that the urgent requirements of the hill districts by way of expenditure on development schemes are beyond the resources of the Provincial Government. The development of the hill districts should be as much the concern of the Federal Government as the Provincial Government. Financial assistance should be provided by the Federation to meet the deficit in the ordinary administration on the basis of the average deficit during the past three years and the cost of development schemes should also be borne by the Central Exchequer [Section N of Appendix A and Para. 14(c)].

The claim of the hill district councils for assistance from general provincial revenues to the extent that they are unable to raise the necessary finances within their own powers is recognized [Paragraph 14(d)].

7. If local councils decide by a majority of three-fourths of their members to license moneylenders or traders they should have powers to require moneylenders and professional dealers from outside to take out licences [Para. 15 and Section J of Appendix A].

8. The management of mineral resources should be centralized in the hands of the Provincial Government but the right of the district councils

to a fair share of the revenue is recognized. No license or leases shall be given by the Provincial Government except in consultation with the local council. If there is no agreement between the Provincial Government and the district council regarding the share of the revenue, the Governor will decide the matter in his discretion [Paragraph 16 and Section I of Appendix A].

9. Provincial legislation which deals with the subjects in which the hill councils have legislative powers will not apply to the hill districts. Legislation prohibiting the consumption of non-distilled liquors like Zu will also not apply; the district council may however apply the legislation [Para. 17 and Section L of Appendix A].

10. It is necessary to provide for the creation of regional councils for the different tribes inhabiting an autonomous district if they so desire. Regional councils have powers limited to their customary law and the management of lands and villages and courts. Regional councils may delegate their powers to the district councils [Para. 18 and Section B(4) of Appendix A].

11. The Governor is empowered to set aside any act or resolution of the council if the safety of the country is prejudiced and to take such action as may be necessary including dissolution of the local councils subject to the approval of the Legislature. The Governor is also given powers to dissolve the council if gross mismanagement is reported by a commission [Paragraph 19 and Sections Q and R of Appendix A].

12. The Central Government should continue to administer the Frontier Tracts and Tribal Area with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over by the Provincial Government with the approval of the Federal Government [Section P of Appendix A and Para. 20(a)].

The pace of extending administration should be greatly accelerated and separate officers appointed for the Lohit Valley, the Siang Valley and the Naga Tribal Area [Para. 20(a)].

The Lakhimpur Frontier Tract should be attached to the regular administration of the district. The case of the portion of the Lakhimpur Frontier Tract recently included in the Tirap Frontier Tract should be examined by the Provincial Government with a view to a decision whether it could immediately be brought under Provincial administration. A similar examination of the position in the plains portions of the Sadiya Frontier Tract is recommended. The portion of the Balipara Frontier Tract around Charduar should also be subject to a similar examination [Para. 20(b)].

Posa payment should be continued [Para. 20(c)].

13. The excluded areas other than the Frontier Tracts should be enfranchised immediately and restrictions on the franchise in the Garo and Mikir Hills should be removed and adult franchise introduced [Para. 21(a) and Section B(1) of Appendix A].

Weightage is not considered necessary but the hill districts should be

represented in the Provincial Legislature in proportion not less than what is due on their population even if this involves a certain weightage in rounding off. The total number of representatives for the hills thus arrived at [See Para. 21(b)] should not be taken into account in determining the number of representatives to the Provincial Legislature from the rest of Assam [Para. 21(b) and Section K of Appendix A].

The total population of the hill districts justifies a seat for the hill tribes in the Federal Legislature on the scale proposed in Section 13(c) of the Draft Union Constitution [Para. 21(c)].

Joint electorate is recommended but constituencies are confined to the autonomous districts. Reservation of seats, in view of this restriction, is not necessary [Para. 21(d) and Section K(3) of Appendix A].

Non-tribals should not be eligible for election from hill constituencies except in the constituency which includes the Municipality and Cantonment of Shillong [Para. 21(e) and Section K(3) of Appendix A].

14. Representation for the hills in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the Instrument of Instructions or corresponding provision [Para. 22 and Section O(3) of Appendix A].

15. Non-tribal officials should not be barred from serving in the hills but they should be selected with care if posted to the hills. The appointment of a due proportion of hill people in the services should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government [Paragraph 23].

16. A commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspects of the administration [Paragraph 24 and Section O(1) of Appendix A].

17. Plains tribals number 1.6 million. Their case for special representation and safeguards should be considered by the Minorities Sub-Committee [Para. 25].

18. The question of altering boundaries so as to bring the people of the same tribe under a common administration should be considered by the Provincial Government. The Barpathar and Sarupathar Mouzas included in the Mikir Hills should be included in the regularly administered areas henceforth [Para. 26].

19. Non-tribal residents may be provided with representation in the local councils if they are sufficiently numerous. For this purpose non-tribal constituencies may be formed if justified and if the population is not below 500 [Para. 27 and Section B(2) of Appendix A].

20. Provisional councils should be set up by the Governor of Assam after consulting such local organisations as exist. These provisional councils which will be for one year will have powers to frame their own constitution and rules for the future [Para. 29 and Transitional Provisions of Appendix A].

(III) REPORTS OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS
(OTHER THAN ASSAM) SUB-COMMITTEE
August and September, 1947

INTERIM REPORT
August 1947

FROM

THE CHAIRMAN, EXCLUDED & PARTIALLY EXCLUDED
AREAS (OTHER THAN ASSAM) SUB-COMMITTEE.

TO

THE CHAIRMAN,

ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, ETC.

SIR,

I have the honour to submit herewith the Report of my Sub-Committee for the Excluded and Partially Excluded Areas of Provinces other than Assam. We have visited the Provinces of Madras, Bombay, Bengal, Central Provinces and Orissa, and in regard to these Provinces our recommendations may be taken as final. We have yet to visit Bihar and the United Provinces and to examine certain witnesses from the Punjab. In respect of these Provinces, the Report may kindly be treated as provisional. Our final Report is expected to be ready by the end of September.

I have the honour to be,

Sir,

Your most obedient servant.

A. V. THAKKAR.

Chairman.

NEW DELHI;

Dated, the 18th August, 1947.

INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER
THAN ASSAM) SUB-COMMITTEE

Introductory: Appendix A shows the excluded and partially excluded areas for which we are required to submit a scheme of administration. Appendix B contains certain statistical information and the thirteenth schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936, which shows the different tribes classed as backward, and among these tribes are to be found the inhabitants of the excluded and partially excluded areas. In determining the areas to be classified as excluded or partially excluded, the Secretary of State for India issued instructions that exclusion must be based upon strict necessity and must be as limited as possible in scope consistently with the needs of the aboriginal population. As regards partial exclusion, he considered that *prima facie* any areas containing a preponderance of aborigines or very backward people which was of sufficient size to make possible the application to it

of special legislation and which was susceptible, without inconvenience, of special administrative treatment should be partially excluded. The Government of India in making recommendations for partial exclusion kept in view the possibility of obtaining convenient blocks of territory with readily recognisable boundaries susceptible of special administrative treatment without inconvenience. Thus, the excluded and partially excluded areas are well defined areas populated either predominantly or to a considerable extent by aboriginals. The excluded and partially excluded areas, however, do not by any means cover the entire population of tribal origin, and in many cases represent only a comparatively small proportion of the aboriginal population, the rest of them being scattered over non-excluded areas. As an example, in the Central Provinces and Berar out of 2.9 millions of tribals of all religions, only 8.3 lakhs live in the partially excluded areas. With the exception of the Mandla district, which is a partially excluded area and contains 60.5 per cent of tribals, Betul and Chhindwara districts which include partially excluded areas and contain 38.4 and 38.3 per cent respectively of tribals, the tribals are scattered all over the Province and comprise almost a fifth of the population in some districts. This kind of intermingling is prominently noticeable in Bombay and Bengal and to some extent in other Provinces also. In Bengal notably, the tribal population of the excluded areas is but a small fraction of the total tribal population of the Province. A common feature of the partially excluded areas is that they are generally located in the out of the way and hilly tracts, and it is in these areas that concentrations of aboriginal population may be found. In the non-excluded areas although small blocks of them can be distinguished, notably in the Madras Presidency, elsewhere, they are interspersed with the rest of the population and are sometimes hardly distinguishable from the general population. Although our terms of reference strictly require us to report on the excluded areas, the total population of tribals in the non-excluded portions of British India not including Assam comes to about 5.5 millions, and we consider therefore that our recommendations should not altogether leave out of consideration such a large population who in many respects are in a very backward condition. We have felt it therefore necessary to recommend that the whole tribal population should be treated as a minority community for the welfare of whom certain special measures are necessary. Bearing this in mind, we proceed to discuss the general features of the tribal population in the different Provinces.

2. *The Excluded Areas*: The excluded areas are few in number and consist of the islands of the Laccadive group on the west coast of Madras, the Chittagong Hill Tracts in Bengal and the Waziris of Spiti and Lahoul in the Punjab. Of these tracts, the west coast islands and the Waziris of the Punjab are isolated from the rest of the Province on account of their geographical position and the impossibility of communicating with

them during a part of the year. The west coast islands are cut off from the mainland for several months during the monsoon. Similarly, the Punjab Waziris are isolated during the winter when snow blocks the passes. Inaccessibility of these areas is largely responsible for their exclusion as well as for the backward condition of their inhabitants. The position in these areas is briefly given below :

(a) *Madras* : The islands may be considered to fall in three divisions, the Amindivi islands opposite the South Canara coast, the Laccadives attached to Malabar, and Minicoy, the southernmost of them, also attached to Malabar. The total area is about 10 square miles and the population, all Muslim, 18,355. The Minicoy islanders are of Sinhalese origin while the inhabitants of the others are akin to the Mapillah of Malabar. The economy of the islands is based on the coconut palm and the produce (coir production is a whole family job) is exchanged for rice and other necessities. The administration is carried on largely by customary laws and special regulations. An amin, or monegar (Amindivi) with powers to try petty criminal and civil cases is the official immediately in contact with the islanders and the amin is in fact selected from the islanders. In the Minicoy island, literacy is said to be cent per cent; in the others, it is negligible. There is no appreciable intercourse between the islands of the three groups and their geographical position necessitates separate treatment. While they are located in a strategic position, we understand that the islands are not suitable for naval stations as they are coral islands and there is difficulty in getting fresh water. Hitherto, they have been administered practically in the manner in which relations were started with them in the days of John Company. Rs. 2 lakhs are spent partly by way of doles including gifts of combs and mirrors, on the visits of the Collector or other official to the islands, but no attempt seems to have been made to increase intercourse between the islands and the mainland.

(b) *Punjab* : The excluded area consists of Spiti and Lahoul with an area of 2,931 and 1,764 square miles respectively. Spiti has a population of only 3,700 and Lahoul about 9,000 (1941). The people are of Tibetan origin and Buddhists. The main difficulty about the areas is the difficulty of communications as the passes leading to them are blocked by snow in the winter.

The Provincial Government have now come to the conclusion that Lahoul need no longer be considered as excluded area and should be brought under the general system of administration.

The cultivation of *kuth* has brought some economic prosperity to this area and many Lahoulis have taken to trade also. Spiti is still economically in a backward condition and the schools there are not flourishing. Spiti has still very little of the contact with the plains which Lahoul has. Several agrarian laws have not been applied to Spiti particularly though the most important enactments are now in force without modification.

(c) *Bengal* : The Chittagong Hill Tracts on the other hand, are not inhabited by a population of Burmese and tribal extraction. They cover an area of about 5,000 square miles and contain a total population of 247,053, mostly Buddhists. In 1941, there were 9,395 literates including 622 females among the tribes out of a population of 233,392. There are 154 schools and a High School at Rangamati. There is a good deal of contact with the plains people in the western portion of the tract, but the eastern portion towards the Lushai Hills and the Burmese border is more primitive.

Jhuming cultivation is practised almost universally and it would appear that there are considerable difficulties in the way of terraced or wet cultivation on account of the friable nature of the hill sides and the difficulty of irrigation. Some settled cultivation also exists and it may happen that a family does both kinds of cultivation. Both plough rent and *jhum* tax are levied. Pressure on the land is increasing and the tribes are greatly apprehensive of encroachment by outsiders.

Weaving and tapestry is a common household occupation but cannot be said to be a cottage industry though it has potentialities in that direction. The district is deficit to the extent of about Rs. 2 lakhs.

The special feature of the Chittagong Hill Tracts are the chiefs, the Chakma Raja, the Bohmong and Mong Raja. The tract is divided into three circles representing the jurisdiction of the Chief. The Chakma circle is the largest and is 2,499 square miles; the Bohmong and Mong circles are 1,935 and 704 square miles respectively. The chiefs have certain magisterial and appellate powers and out of the *jhum* tax of Rs. 6 per family, Rs. 2-8-0 goes to the chief, Rs. 2-4-0 to the headman and Rs. 1-4-0 to the Government. On the ground that they are really tributary powers, the chiefs are claiming the status of Indian States and desire that three States corresponding to the circles should be set up. It is claimed that before the *jhum* tax was imposed there was a capitation or family tax and that the right to levy this tax was a symbol of sovereignty. In 1928, a report on the position of the chiefs was submitted by Mr. Mills who recommended that the chiefs should be relieved of the collection of *jhum* tax and should also be relieved of their magisterial duties, the powers of Honorary Magistrates being conferred on them if they were proved fit. His idea was that "they were the leaders of their people and in that lay their value" and they should therefore be consulted in all important matters of the administration. Their position and future is a matter of some importance and needs careful examination by the Provincial Government. We do not feel that we can express a carefully considered opinion.

Now that Bengal is to be partitioned, the future administration of the hill tracts appears to lie with Assam. The Lushai Hills form in part the hinterland of this district and though communications to the east are not easy, they are not more difficult than with Chittagong. The Karnafuli provides a waterway to Demagiri which is connected with Lungleh in the

Lushai Hills. The *Chakma*, *Magh* and *Mro* of these hills have probably their tribal origin in common with the Lushais and in any case the Province of Assam is the home of many different tribes. It is obvious that the hill tracts should not go to East Bengal in view of its predominantly non-Muslim population. The people themselves are strongly averse to inclusion in Bengal. They desired that the area should be set up as an autonomous district.

3. *Partially Excluded Areas*: The main feature of the partially excluded areas is that they are not altogether excluded from the scope of the Provincial Ministries like the excluded areas nor is the expenditure on them outside the scope of the Legislature. In fact the administration of the areas notably of the Central Provinces and Berar and Bombay has not been appreciably different from the rest of the Province and the Provincial Governments were in greater or less degree opposed to their exclusion. It is in the Agency Tracts of Madras and Orissa and in the Santal Parganas that a different system prevails. A brief account of the areas of each Province follows :

(a) *Madras*: The partially excluded areas consist of the East Godavari Agency, and the Polavaram taluq of West Godavari Agency. The total area is 6,792 square miles and the total population 493,006 of which about 278,000 are tribal, and 54,000 are classed as backward making a total percentage of 67.6. The tribes inhabiting these tracts are Koya, Koya Dora, Hill Reddy, Dombo, Kondh and others. The tribes are pretty backward on the whole and do *podu* (shifting cultivation) largely. Except manual labour they have no non-agricultural occupations worth mentioning. There are special agency rules and save for certain sections the Civil Procedure Code does not apply. Crime is scarce and the aborigines are simple and truthful. The mechanism of justice therefore needs to be a simple one.

There are no local self-governing bodies and tribal panchayats do not seem to be fit for work other than the decision of petty disputes. The toddy palm plays a large part in the life of aborigines. They have suffered in the past through exploitation by moneylenders and landlords and incidents like the Rampa rebellion have occurred in the areas. Licensing of moneylenders, as agreed by the Collector of West Godavari, is probably a definite need of these parts in addition to the prevention of acquisition of land by non-aborigines.

Yaws and malaria are very common in these parts.

(b) *Bombay*: The partially excluded areas which are to be found in the districts of West Khandesh, East Khandesh, Nasik, Thana, Broach and Panch Mahals cover an area of 6,697 square miles and contain a population of 1,125,471 of which 663,628 or 58.9 per cent. are tribals. The tribes are largely Bhil, Varli, Kokna, Thakur and Katkari. In 1935, the Government of Bombay were not in favour of exclusion of any area except the Mewasi Chiefs Estates and the Akrani Mahal in the West Khandesh

District on the ground that the administration of these areas was all along carried on in the same manner as the other tracts and that there were local self-governing institutions in the areas. The Akrani Mahal in the Satpura Hills is an almost purely Bhil area and probably the one with the least contact with the plains.

In 1937, the Government of Bombay appointed Mr. D. Symington to conduct a special enquiry into the conditions prevailing in the aboriginal areas. Mr. Symington pointed out that the local boards were largely or even exclusively run by non-Bhil elected members and opined that it was not a mere question of providing seats for the hill tribes but that these people were not sufficiently educated and advanced either to use their votes sensibly or to produce from among themselves enough representatives capable of looking after their interests intelligently on local boards.

They are not only illiterate but also ignorant of everything outside their daily run. They are contemptuous of education which they regard as a degrading and senseless waste of time. They have more faith in witch-doctors than in pharmacopoeia. They live near the border line of starvation. They are inveterate drunkards. It was not surprising that they take no interest in the local board elections or local board administration.

He also expressed the opinion that the salvation of the aboriginal lay in protecting him from exploitation by the moneylenders who were gradually depriving him of his land, and stopping the drink habit. Giving evidence before us, he reiterated the view that elections would be completely useless so far as these people were concerned.

Among the Thadvi Bhils (Muslims) there is a Sub-Judge. Among the half dozen graduates from the Bhils there is Mr. Natwadkar, the M.L.A. from West Khandesh and there is a lady from the Panch Mahals. The demand for education is however becoming very keen.

In the Warli areas of the Thana District visited by us practically all the land had been taken up by non-tribals and the tribals were reduced to the condition of landless serfs. The Bombay Government have in fact now found it necessary to pass special legislation to prevent alienation of land. On account of the acquisition of all the land by a few people, the land system in this tract has been virtually transformed from a ryotwari system to a system similar to the malguzari system of the Central Provinces.

(c) *Central Provinces & Berar*: The partially excluded areas, of which Mandla District is the largest unit, contain only 833,143 tribals out of a total tribal population of nearly 3 million. The Gond (including Maria and Pardhan) is the main tribe in the Central Provinces and the Korku in the Melghat are prominent in Berar. Although backward and adhering largely to their own customs and ways in the areas where they are still most numerous, the tribes have in appreciable degree assimilated the life of the rest of the population and tribal institutions are either weak or practically non-existent. Mostly the tribes have taken to settle cultivation

and there is little *bewar* or *dahia* in the Province. Of handicrafts and cottage industries, however, there is next to nothing and this is the great weakness of the aboriginal economy. The aboriginal is given to drink but opinion in favour of temperance or prohibition seems to be gaining ground.

The partially excluded areas are, with hardly any exception, administered in the same manner as the other districts. The Central Provinces and Berar Land Alienation Act of 1916 is the only notable legislation enacted specially for the protection of the aboriginals and restricts the transfer of agricultural land from aboriginal to non-aboriginal classes. In 1940, when the Central Provinces and Berar Tenancy Act was amended to confer rights of alienation on certain classes of tenants, the application of the amending Act to the partially excluded areas was made subject to certain modifications designed to secure that unscrupulous landlords would not manipulate to their own advantage the complicated provisions of the Act.

A special enquiry into the problems of the aboriginals was ordered by the Government of the Central Provinces and Berar and a report was submitted by Mr. W. V. Grigson in 1942. Among the points made by Mr. Grigson were the weakness of the tribal representatives in the local boards and the need for provisions to prevent the application of legislation to aboriginal areas except after special consideration. Mr. Grigson was also examined by us as a witness and expressed himself in favour of a system of indirect election for the aboriginals. Opinion of a number of witnesses was not in favour of reserved representation for the aboriginals in proportion to their population. Some witnesses preferred nomination out of a panel submitted by the District Officers. At present there are three tribal members in the Legislature although only one seat is reserved.

The Provincial Government have now created a special department and inaugurated a scheme of development of the aboriginal areas in which multipurpose co-operative societies play a prominent part. Opinion in the Province (as in Bombay) was strongly in favour of boarding schools with free meals as the only way of making schooling acceptable to the aboriginals.

(d) *Orissa*: This Province contains a partially excluded area of nearly 20,000 sq. miles, i.e., almost two-thirds of the Province is partially excluded. The partially excluded area includes the portions of the Madras Agency Tracts transferred to Orissa, the Khondmals of the former Angul District and the Sambalpur District which was formerly in the Central Provinces and Berar. The total tribal population of the Province is 1,721,006 of which 1,560,104 are found in the partially excluded areas. The tribes inhabiting this Province are among the most backward in the whole of India. The Bonda Porja, Gadaba, Kondh and Savara are among the most important of them. In 1939 the Orissa Government appointed a special committee to make recommendations for the partially excluded areas (Thakkar Committee) which found that some tracts were too backward to administer even local boards. Although they have representatives in the

Legislature, four of the five reserved seats are filled in by nomination and some of the nominated members have to be non-tribals. The percentage of literacy in the Agency Tracts is about one per cent. A Backward Classes Welfare Department has recently been set up. The Thakkar Committee made a number of important recommendations which could not be given effect to during the war and are now being taken up.

Apart from the Khondmals which are now attached to the Ganjam Agency, the Angul Sub-Division which is a partially excluded area has only 13,308 tribals who form 8 per cent of its population. The Thakkar Committee recommended the administration of this area as a regular district and pointed out that the Angul Laws Regulation is no longer suited to the advanced condition of the people. Even in 1935, it was stated by the Orissa Government that the area was so advanced that it should be possible within a few years to place it on a level with the normal districts (Para. 49, Recommendations of Provincial Governments and the Government of India, Indian Reprint).

The District of Sambalpur was made a partially excluded area largely on account of the special system of that district, viz., the distinct system of revenue and village administration. The district was formerly part of the Central Provinces and Berar and the Central Provinces and Berar Revenue laws and type of village administration were in force. The aboriginal population of the district is 252,095 and constitutes 19.6 per cent, but most of these tribals seem to have assimilated the customs and culture of the surrounding Hindu population. The administration of the district though differing from the rest of Orissa was not radically different from the administration of the Central Provinces and Berar plains districts until 1921. Three of the Zamindaris of Sambalpur had been declared scheduled districts under the Act of 1874, but with the exception of the Insolvency Act of 1920 all other legislation was applied to the district. The Thakkar Committee recommended (Para. 397) that the district should cease to be a partially excluded area and should be treated as a normally administered area. The committee however considered (Para. 402) that some sort of protection was still needed for the aboriginals of that district and recommended certain special measures for the protection of the land of the aboriginals (Para. 403). The tribes in this district consist mainly of Gond (102,765), Kondh, Kharia and Savara. They are concentrated largely in the Sadar Sub-division of the district. Literacy among them is not up to the level of the Scheduled Castes of the district and amounts to only about 2 per cent. They however take part in elections and in the Sambalpur Sadar constituency there is a reserved seat for the backward tribes. This is the only one of the five tribal seats in the Province which is filled by election.

The question of representation for the Orissa tribes presents somewhat of a problem. Local officials had serious doubts as to the possibility of

finding suitable representatives from among them, at any rate in proportion to their population. The Provincial Government have similar hesitations. In their factual memorandum they have recommended that local bodies should be partly elected and partly nominated. For the Provincial Legislature, "a specific number of seats should be reserved for aboriginal members in general constituencies; but the aboriginal members should be elected to these seats by a system of indirect or group election".

(e) *Bengal*: The partially excluded areas of Bengal consist of the district of Darjeeling and certain police station areas in the Mymensingh district which border on the Garo Hills of Assam.

The Darjeeling district is shown to contain 141,301 tribes out of a total population of 376,369 in 1941. The tribal population of the district seems to consist largely of labour employed in the tea gardens and some Lepcha and Bhotia. Actually, the latter are only about 20,000 in number. The prominent community in Darjeeling is the Gurkha or Nepalese community which numbers about 2½ lakhs (250,000). A good many are employed in the tea gardens and the local police force also contains a high proportion of them. The Gurkha are not regarded as a backward tribe and the thirteenth schedule to the Government of India (Legislative Assemblies) Order does not include Gurkha. They feel however neglected so far as other ranks of Government service are concerned and in the trade and business of the place, the Marwari has the upper hand. On the other hand, the small community of Lepcha (12,000) finds itself dominated by the Gurkha and one of the complaints is that their land (the Lepcha claim to be the original inhabitants) has been gradually taken away from them by Nepalese immigrants.

The partial exclusion of Darjeeling was recommended by the Government of Bengal not because it was considered as a backward area but because it was felt that safeguards were necessary in the interests of the hill people. The fact that Darjeeling was the summer capital of the Government of Bengal and the existence of European tea-planters may have played some little part. The 1941 census shows that even among the tribals (mostly tea garden coolies) there was 16,450 literates out of a total population of 141,301 and 2,571 of these were women.

The local bodies (Municipality and District Board) are not wholly elected bodies and the Deputy Commissioner is the President of the Municipality. Undoubtedly the land of the hill tribes needs to be protected from the maw of money lenders but there is little case otherwise for continuing partial exclusion or special administration.

The Gurkha League desires that there should be an elected Advisory Council in the district so that the interests of the Gurkhas in representation in the services, in the land and industry of the district may be protected. They have also sponsored a movement for union with Assam where there is a strong Gurkha element.

As regards the partially excluded portion of the Mymensingh District, there are about 49,000 Garo in all, but according to the census, some of the *thanas* contain very few tribes. The Provincial Government were opposed to its partial exclusion in 1935. They pointed out that no special measures had been hitherto necessary to protect the tribe and had no indication at any time that the existing administrative system had worked inequitably for them. It would appear that the partial exclusion of this area was consequential upon the exclusion of the Garo Hills District in Assam. The Garo of this area are keenly desirous of being united with the Garo of Assam under a common administration, and in view of the division of Bengal there is a good case for rectification of the boundary, *i.e.* to include the Garo area in the Garo Hills District of Assam. The majority of the population of the partially excluded area (5.94 lakhs) consists however of non-tribals and it will be necessary, therefore, to draw a fresh boundary.

(f) *Bihar*: The partially excluded areas of this Province extend over the enormous area of 32,458 sq. miles comprising the whole of Chota Nagpur division and the Santhal Parganas District. The total population of the area is 9,750,846 and nearly 4.5 million of these are tribal people consisting of Santhal, Oraon, Munda, Ho, Bhumij and other lesser tribes of the Kolarian family. Although the general level of literacy and development in this area is lower than that of the non-aboriginal population, the tribes people here are rapidly advancing and quite a number of people in the learned professions may be found among the Munda and Oraon. Local self-governing institutions exist, and there is no question that the area would be able to take part intelligently in the administration of the Province. The main feature of this area may be summarized in the words of the Provincial Government in recommending partial exclusion:

The Special Tenancy Laws in Chota Nagpur, the Santhal Parganas, *Sambalpur and *Angul are the bulwark of the backward peoples. The legislatures of the future would have the power to amend, modify or even repeal those laws and the only safeguard against legislative action detrimental to the interests of backward peoples is the power of the Governor to refuse assent... The importance of these special tenancy laws to the aborigines cannot be overstressed. The history of the Santhal Parganas and Chota Nagpur was one of continuous exploitation and dispossession of the aborigines punctuated by disorder and even rebellion until special and adequate protection was given. In the fringe areas, such as Manbhum, where the non-aboriginals are in a majority, the aboriginal element would probably have been driven from the land long ago but for the protection given by tenancy laws... The fate of the aboriginal where he has been unprotected has usually been to lose his land...

*Now in Orissa.

In the Santhal Parganas, legislation since 1855 has been mainly by means of special regulations framed by the Governor-General-in-Council. The main function of these regulations was to regulate *inter alia* the agrarian law, the constitution of courts and their procedure, moneylending and the village police. Except in the most important cases the jurisdiction of the High Court was excluded and judicial procedure simplified. In the Kolhanpir of the Singhbhum District also, the Civil Procedure Code was replaced by simplified rules but generally speaking, the laws of the rest of the Province operate in Chota Nagpur. For a detailed account, the factual memorandum of the Provincial Government may be referred to (pp. 97-98, Excluded and Partially Excluded Areas—I).^{*} Since 1937, Section 92(2) of the Government of India Act, 1935, has been made use of to frame some special regulations notably for the Santhal Parganas.

The population of Chota Nagpur and the Santhal Parganas is rather mixed and except in the Ranchi District, the Singhbhum District and the Santhal Parganas, the tribal population are in a minority. In their Factual Memorandum, the Bihar Government have pointed out that a comparison between the figures of 1941 and 1931 census shows that there is room for doubting the accuracy of the figures of the 1941 census. Recently an agitation has been started for the formation of a separate Chota Nagpur Province on the ground that this land is the land of the aboriginal residents who are distinct from the inhabitants of the plains in many ways. Taken as a whole, the tribals form only 45.6 per cent of the total population of the Partially Excluded Areas and in Chota Nagpur they constitute 44.2 per cent of the population. Only in Ranchi (70 per cent), Singhbhum (58.4 per cent) and Santhal Parganas (50.6 per cent) are they in anything like a majority. The creation of a separate Province is a matter outside the scope of our enquiry and we do not find that this is in fact necessary for the satisfactory administration of the tribals.

(g) *United Provinces*: The partially excluded areas are the Pargana inhabited by the Jaunsari tribes in the north and the portion of the Mirzapur District below the Kaimur Range inhabited by mixed tribes of Chota Nagpur and Central India. The area is 483 sq. miles in the Dehra Dun District and 1,766 sq. miles in the Mirzapur District. The total population of both areas is about 200,000.

The Jaunsar Bawar Pargana forms the watershed between the Jumna and the Tons. The country is hilly and offers little land for cultivation. It appears that most of the cultivable land is held by Brahmins and Rajputs and that the Koltas (Scheduled Caste) are debarred from possession of land according to the village Wazibul-arz and occupy practically the position of serfs. Though the great majority of the people are Hindus, polyandry and special systems of divorce are in vogue since ancient times. Although

^{*}Not printed.

the area is under the criminal jurisdiction of the High Court a simplified system of criminal, civil and revenue administration is followed and except in Chakrata Cantonment, regular police are not employed. For civil law, the Commissioner, Meerut, acts as a High Court. The Excise and Opium Acts have not been extended to the area and opium cultivation is permitted. There is great illiteracy in the area and the administration will have to be suited to the life of the inhabitants. In Khat Haripur Bias at the foot of the hills however conditions are different and approximate to those in the plains. The Khat Haripur Bias Tenants Protection Regulation of 1940 has afforded some protection to the tenants. The Provincial Government are of the view that this Khat should be included in the Dehra Dun Tahsil. Though the area is enfranchised and is included in the Dehra Dun rural constituency, it is considered incapable of sending representatives to the Legislature.

As regards the Mirzapur District, the excluded area consists of four parganas of which only the Agori and Bijaigarh parganas have a concentration of aboriginals. The population consists of a number of tribes having affinities to the tribes in the neighbouring Provinces from which they have come. There is no strong tribal life left among them. Their occupations are said to be those usually followed by the Scheduled Castes and in their religious and social customs they are similar to low-caste Hindus.

The land revenue system of this area is different from the rest of the Province and is based on a plough tax. The non-agricultural classes are gradually acquiring land from the aboriginal. The Tahsildars of the tract who exercise magisterial functions are Munsifs also. Except in relation to suits of succession and divorce, the Court of the Commissioner is the highest court of appeal in civil suits. The area is under the jurisdiction of the District Board of Mirzapur.

The Provincial Government are of the view that there is no justification for this area being treated differently from the rest of the Province and that normal administration should be extended to it immediately.

4. *Political Experience*: The people of the excluded areas have no experience of local self-governing institutions of the modern or statutory type and are of course not represented in the Legislature. The management of a local board is perhaps likely to be a much bigger undertaking for the people of these areas than the mere election of a representative to the Legislature and the establishment of such bodies needs perhaps a period of official guidance and control, particularly in areas like the Madras islands. The partially excluded areas on the other hand are all included in electoral constituencies of the Provincial Legislatures and with the exception of the Agency Tracts of Madras and Orissa,* the Santhal Parganas

*In the Koraput District there is a District Board with the Collector as President.

and Jaunsar Bawar, are covered by local boards also. There are certain reserved constituencies, viz., Bihar 7, Orissa 5, Madras 1, Bombay 1 and Central Provinces and Berar 1. In Orissa, four of the five members are selected by nomination. Unlike Assam, no reservation of seats has been made for tribals of the plains or non-excluded areas and these vote along with general voters. In Bombay, Central Provinces and Berar and Chota Nagpur, the tribals though reported to be apathetic and shoved aside by non-tribals, have known at least nominally such bodies as local boards. Nevertheless it is likely to take some time before there is sufficient interest in these bodies and probably interest in local self-government will have to be built up from the village stage. Although as shown by Mr. Grigson in his report, the tribals cast their vote as copiously as others, they have yet to learn to utilize its power to their own advantage.

5. *Effect of Exclusion* : Although exclusion or partial exclusion has been in force for a number of years now, the benefits which the areas have derived from it are not particularly noticeable. In the case of the excluded areas, the sole responsibility for the administration has lain upon the Governor and the revenues earmarked for these areas have been outside the vote of the Provincial Legislature. No definite programme for the development of the excluded areas with a view to removing the disability of exclusion has been followed. The introduction of *kuth* cultivation in Lahaul has brought it some economic prosperity but the west coast islands are probably no better off than they were ten or twelve years ago, and in the Chittagong Hill Tracts no great impetus to enlightenment is perceptible. On the other hand, in the partially excluded areas also little improvement is as yet visible although in Bombay an inquiry into the conditions of the aborigines was started as early as 1937. A Backward Class Department and Board have also been functioning in Bombay. Other Provinces have since taken the cue and welfare work now seems to be forging ahead but it is perhaps the general interest in the backward classes which is responsible rather than the system of partial exclusion as such. The remarks of the Orissa Government are of interest:

The system of partial exclusion has also been a most unsatisfactory constitutional device. In matters of administration of the partially excluded areas, the Ministers tender advice to the Governor, with whom the ultimate responsibility for the good Government of these areas rests. He may accept or reject such advice. The system suffers from a fundamental defect; the responsibility is shared between the Governor and the Ministry answerable to the people of this country or their elected representatives.

No less responsible is perhaps the fact that the representatives of the partially excluded areas have not been capable of bringing sufficient pressure and influence to bear on the Ministry. Further, some of the partially excluded areas which constitute small pockets in large districts

and constituencies could apparently be lost sight of and their interests subordinated to those of the larger areas in which they were contained. Some of the Central Provinces and Berar excluded areas situated in the Chhindwara and Bilaspur districts may be particularly noticed in this connection. They constitute comparatively small islands of partial exclusion which have little voice in a large constituency. The greatest weakness of the scheme of partial exclusion is perhaps the fact that it left areas weakly or only nominally represented in the legislature without any special financial provisions. Whatever the reasons may be, the conclusion to be drawn from the state of affairs noticed by us is that partial exclusion or exclusion has been of very little practical value. There has been neither educational nor economic development on any appreciable scale. The object of special administration has thus not been achieved, and it is clear that if the hill tribes are to be brought up to the level of the rest of the population the strongest measures are now necessary.

6. *Attitude of the General Public* : One thing which we noticed in the course of our visits to the different Provinces was a considerable awakening of the public conscience in the matter of the welfare of the tribal people. The inquiries instituted in some of the Provinces have doubtless contributed to this quickening. Non-official organizations are beginning to take interest in the welfare of the tribes and the work of the Servants of India Society stands out prominently among these. The recent rising of the Warlis in Bombay Presidency has drawn attention, in a rather forcible way perhaps, to their problems. Whatever the reasons, it seems now clear that there is a general tendency to take up the question of development of the tribes people as a serious matter, but whether this by itself is sufficient to ensure the future well-being of the tribes is more than questionable. Most of the Provinces are far from being happily placed in the matter of funds, and the development of areas inhabited by tribes which are situated generally in hilly country is a matter which calls for a good deal of expenditure for which there are many competitors. The emergence of educated people among the tribes is as yet inadequate for the maintenance of interest in their problems.

7. *Potentialities of the Tribes* : The views of people of different points of view regarding the future administration of the hill tracts and of the tribes people themselves was found to be remarkably uniform. To begin with, there was hardly anybody who did not believe that the tribals are capable of being brought to the level of the rest of the population by means of education and contact. Wherever facilities for education and contact have been available, the tribes people have showed that their intelligence can be developed and environmental difficulties overcome. It is true that as yet there is a great deal of apathy in certain areas. Mr. Symington's report in particular points out that the Bhils take little interest in the local boards or in education and their addiction to drink is likely to keep

them in their present backward state. In the partially excluded areas of Orissa, we came across tribals who had not been anywhere beyond a few miles of their village or seen a motor car or a railway train. By and large however we found that there is a considerable demand for education and advancement among the tribal peoples and have no doubt that within a short time they can be brought up to a satisfactory level, if development plans are vigorously pursued.

8. *General Conclusions*: To sum up: Both exclusion and partial exclusion have not yielded much tangible result in taking the aboriginal areas towards removal of that condition or towards economic and educational betterment. Representation of partially excluded areas in the Legislature and in local bodies has been weak and ineffective and is likely to continue to be so for some time to come. Education shows definite signs of being sought after more and more but the poor economic condition of the aboriginal and the difficulty of finding suitable teachers present problems which must be overcome before illiteracy can be properly tackled. The great need of the aboriginal is protection from expropriation from his agricultural land and virtual serfdom under the money-lender.

There are certain tracts like Sambalpur and Angul in the Orissa Province which need no longer be treated differently from the regularly administered districts. On the other hand areas like the Madras and the Orissa Agency tracts still need a simplified type of administration which does not expose them to the complicated machinery of ordinary law courts. Differences in social customs and practices among the tribes also need to be kept in mind.

9. *Representation in Legislatures*: We have pointed out at the very outset that the tribals who live in the non-excluded areas form part of our problem and cannot be left out of account. In considering representation in the Legislatures we would urge that the tribes should be treated as a whole as a minority and not separately. In this regard, we would refer to a certain difference of opinion which exists among the parties interested. In Bombay the view of the Ministers and others dealing with the problem was unreservedly in favour of providing representation for the tribes as a whole by reservation of seats in a joint electorate. In Madras also a similar view found favour. In the Central Provinces, however, different views were expressed not only in respect of the method of election but also about reservation, both by officials and by Ministers. Certain district officials suggested that there should be nomination out of a panel submitted by district officials. Mr. Grigson favoured a scheme of indirect elections by means of group panchayats. The general feeling among these officials was that election was not likely in the present circumstances to produce suitable representatives. Some point was given to this by the reply of Mr. Wadiwa, a Gond pleader, who gave evidence before us, that he could not stand for election on account of the expense

involved. The Ministers on the contrary seemed to have no objection to elections but were strongly opposed to reservation of seats in proportion to their population. Mr. Grigson also did not appear to favour reservation though he was of the view that if reservation was made for the Scheduled Castes there was no justification for not protecting the aboriginal similarly : "But once we start with reservation there is the possibility of it becoming permanent." The Ministers considered that increased representation would be provided by their scheme of demarcating constituencies without the evil of creating a separatist mentality.

These tahsil areas will be delimited so that particular communities in particular areas will get an effective voice. Just as particular wards in a municipality return only a particular class or community of persons—some wards in Nagpur Municipality return only Muslim members—an Ahir ward or tahsil will return only an Ahir, a Gond tahsil will return only a Gond and so on. In this way we want to give all the sections of our people thorough and complete representation without whetting their communal appetite.

As regards the other tribals who are not found in compact areas, it is asserted that they are generally dispersed in the Province and not easily distinguishable from the other people. In Orissa reservation of "a specific number of seats" in general constituencies is recommended but it is considered necessary that aboriginal members should be elected to these seats by a suitable system of indirect or group election. The remarks of the Orissa Government in connection with the system of partial exclusion are relevant:

The inadequacy of representation of the aboriginal people of these areas in the Legislature has also contributed to their neglect. They are not vocal nor have they any press for propaganda. They have been represented in the Assembly by five members, four nominated by the Governor and one elected from Sambalpur. As a result of this insufficient representation, the problems of these areas do not receive the attention to which their size and importance entitle them.

We have given serious thought to the question and come to the conclusion that the tribals should have reserved seats in a joint electorate based on adult franchise. We do not consider the scheme of the Government of the Central Provinces and Berar adequate as it provides no safeguards for the large numbers of tribals who live in the non-excluded areas and who without reservation would have no chance of being represented in the Legislature. The case of the tribals is not essentially different from that of the Scheduled Castes and they are in fact more backward in education and in their economic condition than the Scheduled Castes. Representation in proportion to their numbers in the Legislatures, even if some of them are not vocal or able to argue their case will emphasize the importance and urgency of their problems. And it is to the interest

of the country to see that these original inhabitants of the Indian soil are brought up to the level of the rest so that they can contribute in due measure to the progress of the country rather than be a drag on the rest. We do not consider that the method of indirect election or nomination should be resorted to. The aborigines have to take part in direct election some time and the sooner their training for this starts the better.

Having regard to the circumstances of the Madras islands and the Punjab Excluded Areas, we recommend special representation as follows:

Laccadive Group	1
Lahaul and Spiti	1
Amindivi Group	1
Minicoy	1

It seems clear to us that these areas cannot be included in other constituencies, nor would they be suitably represented if so included.

10. *Legislation—(a) Areas to be Scheduled:* The provisions for partially excluded and excluded areas in the 1935 Constitution are designed to prevent the application of unsuitable legislation, to permit the making of special rules and regulations required for any different system of administration needed in the aboriginal areas, and for the provision of funds at the discretion of the Governor for the totally excluded areas. Although in most of the Provinces there has been a good deal of assimilation of the tribal people to the people of the plains, yet the social system of the tribes is different from that of the plains people in a number of the partially excluded areas. In the excluded areas, of course as already pointed out, there are people like Tibetans, the Chakma, Mro and Mogh of the Chittagong Hill Tracts, the islanders of the Laccadive Islands and so on. In the partially excluded areas, the tribes of Orissa and Chota Nagpur and even the Gonds of the Central Provinces and the Bhils of Bombay who have assimilated the life of the plains to a greater extent than others have different social customs. The law of inheritance and the systems of marriage and divorce are different from those of other communities. It is possible of course for the Legislatures to bear these features in mind and pass different laws just as different laws have been passed for Hindus and Muslims but there are other subjects as well in which the tribes will have to be treated on a different footing. In places like the Agency Tracts, for example, the population is as yet too primitive to be able to understand or make use of the complicated procedure and law of the civil, criminal and revenue courts. We have mentioned earlier the features peculiar to the Santhal Parganas and the Jaunsar-Bawar Pargana. Even in the more advanced tracts of the Central Provinces and of Bombay, the tribal is at a serious disadvantage on account of his poverty and ignorance and the procrastination of courts and officials and is easily victimized. This is of course true of all poor and simple rural folk, but it is clear that in the case of the aboriginal, it applies to a community found predominantly

in certain areas and not to individuals. Thus a simplified system of dispensation of justice will be necessary in certain areas. There is again the question of land legislation. The land is the only thing left to the aboriginal who does not follow non-agricultural professions to any appreciable extent as yet. In the Chota Nagpur Division different kinds of tenure have been recognized for the tribals and in any case, even where the tenure is simple and common to other areas, grant of the power of alienation to the tribals is certain to result in his gradual expropriation. We are thus led to the conclusion that it is necessary to provide that in certain areas laws of the Provincial Legislature which are likely to be based largely on the needs of the majority of the populations should not apply automatically, if not generally, at least in certain specified subjects. A general provision of this kind is of course a matter of convenience and would eliminate the need for the Legislature to provide special clauses or saving clauses. It would also enable special consideration if the legislation is to be applied to the area. This of course involves notification of areas and we recommend provision for the purpose. We propose that the areas should be known as "Scheduled Areas" in future.

11. (b) *Application to Scheduled Areas*: The next question which arises is whether any special mechanism is to be provided or whether the matter should be left to the Legislature without any additional safeguard to apply legislation. The Government of Orissa have apparently thought it sufficient if the laws are specially extended by the Provincial Government and other Governments may hold similar views. The fact that non-tribals will be in a majority in all the Legislatures and the fears which the tribals entertain that their interests and special customs and circumstances may be ignored must in this context be taken into account. Doubtless they would like to feel that they themselves have a voice in the decision and that a decision is not taken by persons unacquainted or imperfectly acquainted with their special circumstances and not genuinely interested in their welfare. The feeling which prevails in this matter has been expressed thus: "Speaking purely hypothetically, it should not be possible for the member representing Chittagong to be able to oblige his constituents by getting some radical changes made to the detriment of the hill tribes, which is of local advantage to them," (Lt.-Col. Hyde, Chittagong Hill Tracts) and "Ministers may find that, owing to political pressure from organized pressure groups, it is impossible for them to give the protection which they desire to give" (Grigson, Aboriginal Tribes Enquiry Officer, Central Provinces and Berar).

The present system under which the Governor in his discretion applies the legislation is not likely to appeal as this principle will be regarded as undemocratic even though the Governor in future may be an elected functionary. An alternative mechanism is therefore necessary. We have considered the question in all its aspects and come to the conclusion that

in respect of certain subjects, laws passed by the Provincial Legislature should not be applied to the Scheduled Areas if the Tribes Advisory Council does not consider them suitable for those areas. We have also provided that in other subjects the Provincial Government should have the power to withhold or modify legislation on the advice of the Tribes Advisory Council [Para. 15].

12. (c) *Special Subjects*: It has been stated above that in certain subjects legislation should not apply if considered unsuitable by the Tribes Advisory Council. We consider such a definition desirable to prevent any unnecessary complication of legislative procedure or delaying of legislation. In most of the areas ordinary legislation is applicable and the policy has been and should be to apply legislation normally unless there is any special reason to the contrary. As a matter of general concern restriction seems necessary only in certain matters and we recommend that all legislation relating to (1) social matters, (2) occupation of land including tenancy laws, allotment of land and setting apart of land for village purposes, and (3) village management including the establishment of village panchayats should be dealt with in this manner.

13. *Criminal and Civil Courts*: We have noticed that there are areas where the regular machinery for the disposal of criminal and civil cases is not in operation and an "Agency" system is in force. The civil procedure has in particular been substituted by a simplified procedure. We have no doubt that simplified procedure should be possible for the disposal of petty criminal and civil cases and recommended accordingly that except where the regular procedure is already in force, a simplified system should continue to be enforced. We are not however in a position to say whether the exact procedure followed at present needs modification or not.

14. *Reservation in Federal Legislature*: We have recommended reservation of seats in the Provincial Legislature. We recommend reservation in the Federal Legislature also on the basis of population in each Province. On the scale contemplated in the draft Union Constitution, this would be 5 for Bihar, 3 for the Central Provinces and 2 each for Bombay and Orissa.

15. *Provincial Tribes Advisory Council*: Most of the Provincial Governments have found it necessary to set up advisory bodies for the proper administration of the tribal areas. In our view, it is necessary that there should be a body which will keep the Provincial Government constantly in touch with the needs of the aboriginal tracts (Scheduled Areas) in particular and the need for such a council requires little explanation. Whatever legal machinery is set up, it is no fancy to suggest that its actual translation into practice may not be in accord with its spirit, and besides the legal machinery itself may be found defective in practice. For a number of years clearly, the development of the aboriginals will require the most meticulous care. There are many ways in which the

aboriginals' interests may be neglected and it is known that regardless of certain prohibitory rules they are subjected to harassment at the hands of subordinate government officials and contractors. In spite of the abolition of *begar* for instance there are still a good many cases of it in fairly serious form coming to notice from time to time. The working of Provincial legislation or the machinery of administration in whole or in part needs constant scrutiny and regulation. The reclamation of the tribal is not likely to be an easy matter since it is seen from experience that even where provision for local bodies exists the aboriginal requires special encouragement to take active part in it. We have also pointed out that the representation of the aboriginal in the Legislature is likely to be weak for some time to come. To exercise special supervisory functions therefore and to bring to the attention of the Provincial Government from time to time the financial and other needs of the aboriginal areas, the working of development schemes, and the suggestion of plans or legislative or administrative machinery, it is necessary to provide by statute for the establishment of a Tribes Advisory Council in which the tribal element is strongly represented. There may be no objection to the advisory council being made use of for supervision of the interests of other backward classes as well. We are of the view that the establishment of an Advisory Council for the next ten years at least is necessary in the Provinces of Madras, Bombay, West Bengal, Bihar, Central Provinces and Berar, and Orissa and we recommend that statutory provision be made accordingly. We have referred earlier [Para 11] to the part that the Tribes Advisory Council will play in respect of legislation.

16. *Central Commission*: We have indicated above that unless the attention of the Government is concentrated with special emphasis on the problems of the aboriginals and the needs of the Scheduled Areas, there is little likelihood of any development. We do not intend any reflections on Provincial Governments if we remark that they may fail to take adequate interest. The Provincial finances may also need to be strengthened by subventions from the Central fisc and we have in fact recommended that the Federation should come to the aid of the Provinces to the extent necessary. We are of the view therefore that the Federal Government should take direct interest in the development of the tribes. We consider that it should be possible for the Federal Government to institute at any time a special commission to enquire into the progress of plans of development and also into the conditions of the Scheduled Areas and tribals in general. In any case, such a commission should be instituted on the expiry of ten years from the commencement of the new Constitution. We have no doubt that the Provinces would welcome such a commission and we recommend that provision for its appointment should be made in the Union Constitution.

17. *Central Subventions*: The development of the Scheduled Areas is

likely to involve heavy expenditure on account of the nature of the country and other practical difficulties. It is obvious that in the hilly tracts the construction and maintenance of roads will require a good deal of money. Most of these tracts are devoid of any attraction for officials who thus need to be specially compensated. The provision of schools, medical facilities and water supply which are dire needs will doubtless make a heavy demand on the budget. While we are clearly of the view that to the maximum possible extent the funds required for the welfare and development of these areas should be found in the Provinces themselves, we feel that unless the Central Government provides the necessary assistance some of the Provincial Governments at any rate may find it impossible to carry out schemes of improvement. We recommend therefore that for all schemes of development approved by it the Central Government should contribute, in whole or in part, funds for the implementation of the development schemes. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas. We have recommended statutory provision to this effect.

18. *Provincial Funds*: The main anxiety of the Scheduled Areas will centre round the attitude of the Legislature in the provision of funds. These areas as already pointed out will be weakly represented and, being deficit areas, may be dealt with on the principle that he who pays more gets more. In the absence of a keen demand it is even possible that there is a diversion of revenues to the more vociferous areas. We have remarked earlier that one of the weaknesses of the system of partial exclusion is the lack of financial safeguards. There is very clearly a necessity for making the required provisions to remove this weakness. It has been suggested to us that funds for the development of the Scheduled Areas should be provided by the fixation of a statutory percentage of the provincial revenues. It may be easy to provide by statute that such and such a proportion of the provincial revenues should be spent upon the Scheduled Areas, but there is first of all the difficulty of determining the ratio. The needs of the Scheduled Areas are great in comparison with the population and in some cases even with the extent of the tract. Secondly if a rigid statutory ratio is fixed, it may in practice be found that it is not possible to adhere to it. The framing of a budget has to take into account many factors and rigid statutory ratio is likely to cause difficulties to the Provincial Governments, apart from being perhaps ineffective in providing the real needs of the hill tracts. If a low ratio is fixed it is practically certain that the Provincial Governments will not exceed that. If a high ratio is fixed, the Provincial Government may be unable to meet it and in any case the working out of an acceptable ratio itself seems impracticable in the circumstances without a careful examination of the needs of all the different tracts. We feel consequently that no direct statutory safeguard of this nature is possible. The other possibility is that the Governor in his discretion should set apart funds and that these

funds should be outside the vote of the Legislature. We feel that such a provision is likely to be repugnant to the Provincial Legislature.

We recommend however that the revenues derived from and the expenses incurred on the Scheduled Areas from the provincial budget should be shown separately so as to prevent the needs of these areas being overlooked through incorporation in the general items. Such a separate statement will of course afford a better opportunity for scrutiny and criticism.

19. *Governor's Responsibility*: In connection with financial safeguards the view was expressed that the formulation of a plan of improvement affords sufficient guarantee for the expenditure of funds. We are of the view that in the provisions corresponding to the Instrument of Instructions the Governor should be required to see that a suitable scheme of development is drawn up and implemented as far as possible [See para. 17].

20. *Tribal Minister*: Connected with the formulation of development schemes and the provision of adequate expenditure for the hill tracts is the need for the appointment of a separate Minister to give effect to the plans and to look after the interests of the aboriginals. The tribal population in the Central Provinces, Orissa and Bihar forms a considerable proportion of the total population and on this ground alone the tribals have a case for representation in the Provincial Government. In the Central Provinces, the tribal population is nearly 18 per cent. In Orissa, almost a fifth of the population is tribal, and in Bihar there are over 5 millions of them constituting about 14 per cent. Partly in order to provide representation for the tribals and in any case to see that adequate attention is paid to their administration we are of the view that there should be a separate Minister for the tribal areas and tribes in the Central Provinces, Orissa and Bihar and that this should be provided by statute. The Minister should be a tribal himself unless a suitable person cannot be found. We may add that the Government of Orissa have recognized that there should be a separate portfolio for the welfare of the backward classes under the new Constitution.

21. *Services*: It has been pointed out that the tribals constitute an appreciable proportion of the population particularly in some Provinces. On this account, the policy of recruitment of a due proportion of aboriginals, having regard to reasonable efficiency, into the Government services is justified and necessary and must be followed. Apart from this, however, it is necessary that there should be an adequate number of tribals in the services so that the constant complaints of mishandling by non-tribal officials, particularly, of such servants as forest guards, constables or excise peons and clerks, can be minimized. Moreover, it is only by adequate representation in the Government and local bodies services that the tribals can gain the necessary confidence and status.

We do not consider that a separate service of tribal people is necessary or desirable for the Scheduled Areas, and we recommend that they should be recruited to a general cadre. This will enable them to come into contact

with non-tribes people and we also consider that there is no objection to the posting of selected non-tribal officials to the Scheduled Areas. In fact, in the evidence before us, opinion has been practically uniform that there is no necessity for a special cadre of officials for the hill tracts and what is really required is selection of sympathetic officials for working in the hills. We would draw attention here to the importance of providing suitable accommodation and facilities for medical attention to officials serving in the scheduled areas. Malaria and other diseases constitute the scourge of these hill tracts and unless special attention is paid to the health of the staff it is unlikely that development schemes will make much headway. The provision of facilities for recreation and adequate compensatory allowances for officials posted to these areas should be kept in mind. Any tendency to treat these posts as penal posts or posts for the safe deposit of incompetents must be strongly deprecated.

22. *Tribal Panchayats*: We have recommended that simplified rules should be continued where they are in force in the Scheduled Areas for the trial of civil and criminal cases. Wherever trial institutions are still fairly vigorous, we would recommend that they should be utilized to try petty civil disputes and criminal cases. The establishment of the more advanced type of village panchayat is recommended wherever possible.

23. *Shifting Cultivation*: Shifting cultivation or *podu* is practised mostly in the Koraput and Ganjam agency tracts of Orissa and in the similar agency tracts of Madras. In the Central Provinces it is prohibited by law and is not practised to any appreciable extent except in the Baiga Chak where it is permitted and in the zamindaris. We have nothing to add to the recommendations of the Orissa Partially Excluded Areas Inquiry Committee. This method of cultivation should be eliminated, as soon as possible.

24. *Prohibition*: We invite the attention of Provincial Governments to the recommendations made by Mr. Symington (Bombay) and the Orissa Partially Excluded Areas Committee. Temperance propaganda should be taken up as part of the welfare work. A feeling has been growing among aborigines, particularly in the tracts of Bombay and the Central Provinces that prohibition is to their advantage, and this feeling should be fostered among all the tribals.

25. *Land*: The importance of protection for the land of the tribals has been emphasized earlier. All tenancy legislation which has been passed hitherto with a view to protecting the aboriginal has tended to prohibit the alienation of the tribal's land to non-tribals. Alienation of any kind, even to other tribals, may have to be prohibited or severely restricted according to the different stages of advancement. We find however that Provincial Governments are generally alive to this question and that protective laws exist. We assume that these will continue to apply and as we have made special provision to see that land laws are not altered to the disadvantage of the tribal in future, we do not consider additional restrictions necessary. As

regards the allotment of new land for cultivation or residence, however, we are of the view that the interests of the tribal need, to be safeguarded in view of the increasing pressure on land everywhere. We have provided accordingly that the allotment of vacant land, belonging to the State in Scheduled Areas should not be made except in accordance with special regulations made by the Government on the advice of the Tribes Advisory Council.

26. *Money-Lenders*: Connected with the protection of the land is the need, for prevention of exploitation by money-lenders. We consider it necessary that in the Scheduled Areas money-lenders should not be permitted at all and that at any rate they should be allowed to operate under licence and stringent control only.

27. *The Scheduled Areas*: It has been pointed out that areas like Sambalpur, Angul and Darjeeling need no longer be treated as partially excluded areas. The United Provinces Government are of the view that the Khat Haripur Bias should be detached from the Hill Sub-division. They have also recommended the removal of the Dudhi Partially Excluded Areas. The population of the partially excluded areas in the United Provinces is small and the Jaunsar-Bawar Pargana is not inhabited by people who are in an ethnic sense tribals. We have not recommended a Tribes Advisory Council for the United Provinces and we do not consider it necessary to schedule either of these areas. Similarly we do not consider it necessary to schedule the Spiti area of the Punjab. In all these tracts, it will be open to the Provincial Government to apply the provisions of Part II of the law proposed by us. In Bombay, we consider that certain areas in the West Khandesh District and the partially excluded areas of the Broach and Panch Mahals Districts should henceforth be administered without any special provisions. The Central Provinces areas are retained as they are and in Chota Nagpur we are provisionally of the view that only the three districts which have a majority of tribals should be scheduled. The schedule proposed is shown as Appendix D.

On the other hand, there may be other areas which the Provincial Governments may like to bring under special administration. This can be done by the Provincial Government in their discretion. For the protection of the land of tribes like the Lepcha in Darjeeling the Provincial Government could make the appropriate provision of the chapter relating to the Scheduled Areas applicable to the area concerned.

28. *Draft Provisions*: We enclose a draft of provisions contemplated by us in roughly legal form (Appendix C).

A. V. THAKKAR (*Chairman*).

D. N. SAMANTA.

THAKUR PHUL BHAN SHAH.

RAJ KRUSHNA BOSE.

JAIPAL SINGH.

P. C. GHOSH.

APPENDIX A

PART I—EXCLUDED AREAS

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

BENGAL

The Chittagong Hill Tracts.

THE PUNJAB

Spiti and Lahaul in the Kangra District.

PART II—PARTIALLY EXCLUDED AREAS

MADRAS

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

BOMBAY

In the West Khandesh District, the Shahada, Nandurbar and Taloda Talukas, the Navapur Petha and the Akrani Mahal, and the villages belonging to the following Mehwasli Chiefs namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walvi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur.

The Satpura Hills reserved forest areas of the East Khandesh District.

The Kalvan Taluk and Peint Peth of the Nasik District.

The Dahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thana District.

The Dohad Taluk and the Jhalod Mahal of the Broach and Panch Mahals District.

BENGAL

The Darjeeling District.

The Dewanganj, Sribardi, Nalitabori, Haluaghat, Durgapur and Kalmakanda police stations of the Mymensing District.

THE UNITED PROVINCES

The Jaunsar-Bawar Pargana of the Dehra Dun District.

The portion of the Mirzapur District south of the Kaimur Range.

BIHAR

The Chota Nagpur Division.

The Santhal Parganas District.

THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ORISSA

The District of Angul.

The District of Sambalpur.

The areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

The Ganjam Agency Tracts.

The areas transferred to Orissa under the provisions of the aforesaid Order from the Vizagapatam Agency in the Presidency of Madras.

APPENDIX C*

STATUTORY RECOMMENDATIONS

PART I

A. The Provincial Government may at any time by notification apply the provisions of Part II of this Chapter or of any of its sections to such areas as may be specified in the notification, being areas inhabited by any of the tribes named in Schedule A† (and hereinafter referred to as "the tribes").

B. (1) The number of representatives of the tribes in the Provincial Legislature shall not be less in proportion to the total number of representatives than the population of the tribes in the Province bears to its total population.

(2) In the Federal Legislature (House of the People) there shall be such number of representatives of the tribes of each Province as may be in accordance with the total population of the tribes in that Province on the scale prescribed in Section...

C. The election of the representatives of the tribes to the Provincial Legislature shall be by universal adult franchise.

*Appendix B (Statement showing the total population and tribal population of Provinces) not reproduced.

†Not reproduced.

PART II

D. As from the commencement of this Constitution the provisions of this Part shall apply to the areas specified in Schedule B to this Chapter* (and hereinafter referred to as "the Scheduled Areas").

E. (1) The Provincial Government may, if so advised by the Tribes Advisory Council, by notification direct that any law passed by the Legislature shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe :

Provided that the Provincial Government shall, if so advised by the Tribes Advisory Council, direct that any law passed by the Provincial Legislature in respect of the following subjects, that is to say, (i) all social matters including inheritance of property; (ii) occupation of land (not being forests reserved under the provisions of the Indian Forest Act or other law applicable) including tenancy laws, allotment of land, reservation of land for any purpose; (iii) village management including the establishment of village panchayats, shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe with the concurrence of the said Council.

(2) The Provincial Government may, in consultation with the Tribes Advisory Council, make special regulations for a Scheduled Area on any matter not provided for by a law in force in the Area.

F. Vacant land in a Scheduled Area which is the property of the State shall not be allotted to a non-tribal except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council.

G. (1) The Provincial Government may, and if so advised by the Tribes Advisory Council shall, direct that no person shall carry on business in a Scheduled Area as a moneylender except under and in accordance with the conditions of a licence issued by it or by an officer authorized by it in this behalf.

(2) Any contravention of an order issued by the Provincial Government under Sub-section (1) of this Section shall be an offence.

H. The revenue and expenditure pertaining to a Scheduled Area which is credited to or met from the funds of the Provincial Government shall be shown separately in the annual financial statement of the Provincial Government.

I. There shall be paid out of the revenues of the Federation such capital and recurring sums as may be necessary to enable the Provincial Government to meet the cost of such schemes of development as may be undertaken with the approval of the Federal Government for the purpose of raising the level of administration of the Scheduled Areas and all round development of the tribes to that of the rest of the Province.

J. (1) There shall be established as soon as may be after the commencement of this Constitution in the Provinces of Madras, Bombay, West Bengal, Bihar, C. P. and Berar and Orissa a Tribes Advisory Council to perform such functions as may be prescribed in this Constitution and to advise the Provincial Government from time to time on all matters pertaining to the administration and welfare of the tribes and of the Scheduled Areas.

(2) The Tribes Advisory Council shall consist of not less than ten and not more than twenty-five members of whom three-fourths shall be elected representatives of the tribes in the Provincial Legislature (Lower House).

(3) The Provincial Government may make rules prescribing or regulating as the case may be :

(a) the number of members of the Council, the mode of appointment of the members and of the Chairman or other office-bearers;

- (b) the conduct of meetings and procedure in general;
- (c) relations with officials and local bodies;
- (d) all other incidental matters.

K. (1) The Federal Government may, at any time, and shall after the expiry of ten years from the commencement of this Constitution, institute a commission to report on the administration of the tribes and the Scheduled Areas in general.

(2) The Federal Government may at any time require the Provincial Government to draw up and execute such schemes as it considers essential for the welfare of the tribes.

L. In the Provinces of Bihar, the Central Provinces and Berar and Orissa there shall be a separate Minister for Tribal Welfare:

Provided that the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes or other backward classes or any other work.

M. Notwithstanding anything in the Criminal Procedure Code, 1898, or the Civil Procedure Code (Act V of 1908), the Provincial Government may make special regulations for a Scheduled Area for the trial of offences other than those punishable with imprisonment for five years or more or with death or transportation for life and of disputes other than those arising out of special laws respectively and may empower headmen or panchayats to try such cases.

APPENDIX D*

SCHEDULE B

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

BENGAL

The Chittagong Hill Tracts.

BOMBAY

In the West Khandesh District: The Navapur Petha, the Akrani Mahal and the villages belonging to the following Mehwasai Chiefs: (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walvi of Gaohali, (5) the Wassawa of Chikhli and (6) the Parvi of Navalpur.

In the East Khandesh District: The Satpura Hills Reserved Forest Areas.

In the Nasik District: The Kalvan Taluk and Peint Peth.

In the Thana District: The Dahanu and Shahpur Talukas and Mokhala and Umbergaon Pethas.

BIHAR

The Ranchi and Singhbhum districts and the Latehar sub-division of the Palamau district of the Chota Nagpur Division.

*Schedule A relating to list of tribal people not reproduced.

The Santhal Parganas District, excluding the Godda and Deogarh sub-divisions.

THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil and the Dhanora, Dudmala, Gewardha, Jharapara, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur Jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ORISSA

The Ganjam Agency Tracts including Khondmals.

The Koraput District.

MINUTE OF DISSENT

Scheduled Areas

I regret I must submit a minute of dissent in regard to the "Scheduled Areas" for the Chota Nagpur Plateau. I cannot agree to the elimination of the districts of Manbhum, Hazaribagh and Palamau which, even according to the unreliable 1941 census, contain 678,126, 478,253 and 323,106 Adibasis respectively, that is, a total of 1,479,485 Adibasis for the three districts. I cannot see how I can agree to the demolition of the economic, geographical and ethnic unity and entity of the Chhota Nagpur Division. It is not right that we should give an *ex parte* verdict and change the *status quo* of these three districts.

August 19, 1947

JAIPAL SINGH.

INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE

Summary of Recommendations

1. Tribes who live in the non-excluded areas are part of the problem and the tribes as a whole should be treated as a minority. Tribals should have reserved seats in a joint electorate based on adult franchise in proportion to their population. One representative each is recommended for the Laccadive, Amindivi and Minicoy Islands respectively in the Madras

Legislature and one for the Lahaul and Spiti Wazris in the East Punjab Legislature [Para. 9 and Sections A and B (1) of Appendix C].

2. It will be necessary to provide for the exclusion of unsuitable legislation in such matters as land, village management and social customs in certain areas inhabited predominantly or to an appreciable extent by tribals. These areas will be known as Scheduled Areas [Para. 10].

3. Legislation in such matters as land and social customs should not be applied to Scheduled Areas if the Tribes Advisory Council advises to the contrary [Paras. 11 and 12 and Section E of Appendix C].

4. Simplified procedure should be continued for the disposal of petty criminal and civil cases [Para. 13 and Section M].

5. Seats should be reserved in the Federal Legislature on the basis of the tribal population of the Province. A Tribal Advisory Council should be set up with a minimum of ten and a maximum of 25 members in Madras, Bombay, Bengal, Bihar, C. P. and Orissa [Para. 15 and Section J of Appendix C].

6. There should be provision for the Federal Government to institute a special commission to enquire into the progress of plans of development and also into the conditions of the Scheduled Areas and tribals in general [Para. 16 and Section K (1) of Appendix C].

7. It will be necessary for the Central Government to come to the assistance of Provincial Governments for the execution of schemes of development by providing the necessary funds. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas [Para. 17 and Sections I and K (2) of Appendix C].

8. The revenues derived from and the expenses incurred on the Scheduled Areas from the Provincial budget should be shown separately in the annual financial statement of the Province [Para. 18 and Section H of Appendix C].

9. It should be the Governor's responsibility to see that schemes of development are drawn up and implemented [Para. 19].

10. There should be a separate Minister for Tribal Welfare in C. P., Orissa and Bihar, and provision for this should be contained in the statute [Para. 20 and Section L of Appendix C].

11. There should be a due proportion of aboriginals recruited into the various Government Services. A separate service is not recommended but non-tribal officials posted to the Scheduled Areas should be selected with care [Para. 21].

12. Tribal panchayats should be encouraged wherever possible [Para. 22].

13. Shifting cultivation should be discouraged [Para. 23].

14. Temperance propaganda should be carried on as part of tribal welfare work [Para. 24].

15. The alienation of land belonging to tribals to non-tribals should be

prohibited. Allotment of new land in Scheduled Areas should not be made to non-aboriginals except in exceptional cases [Para. 25 and Section F of Appendix C].

16. There should be provision for control of money-lenders by a system of licensing [Para. 26 and Section G of Appendix C].

Sambalpur, Angul and Darjeeling and certain areas in Bombay need not be treated as Scheduled Areas. In Bihar the three districts of Ranchi, Singhbhum, and Santhal Parganas only, where the tribes are in a majority, are included in the Schedule provisionally. The U. P. and Punjab areas are not included [Para. 27 and Schedule B of Appendix D].

FINAL REPORT
September, 1947

TO

THE CHAIRMAN,

ADVISORY COMMITTEE ON MINORITIES ETC.

DEAR SIR,

This is our final report written after our visit to Bihar and the United Provinces. It relates to the partially excluded areas of these Provinces and the excluded areas of the Punjab in respect of all of which the recommendations contained in our interim report were provisional. Certain general recommendations have also been added.

2. With reference to Bihar we confirm the constitutional proposals already made by us *in toto*.

BIHAR

We consider it necessary in addition to refer to certain matters connected with the administration of this, the largest compact block of territory comprising any excluded area in India, which came to our notice during our tour. To begin with, the Christian section of the tribals, though small in number, is educationally and economically far in advance of the non-Christian tribals. The demand for education among the non-Christians is said to be negligible and this presumably is the result of their economic backwardness which makes it necessary that children should assist their parents in earning their livelihood. There are however allegations that the Christian teachers and educational officials encourage only Christian children, and as a good number of the schools are run by Christian missions, the non-Christians lack facilities for education. The Christians again appear to be much better organized and vocal and they are found to take prominent part in local and political organizations. The other striking feature of this area is the feeling common among educated tribals and shared by non-tribals in considerable measure that Chota Nagpur has

little share in the administration commensurate with its area, population and industrial importance and is being neglected by the Government which is made up of elements interested mostly in the rest of Bihar. Certain non-aboriginal witnesses have expressed their views of the neglect of Chota Nagpur in no uncertain terms and suggested that the ameliorative measures claimed by the Government are purely defensive action prompted by the separation movement. Even when the Government is supposed to be resident at Ranchi, it is given as concrete proof of their lack of interest that they are mostly absent on tour in areas other than Chota Nagpur in which they are interested. Dr. Sinha has also stated that the present Government has yet to do something "to capture the imagination of the people" and that under the present practice "the Hon'ble Ministers stay for a very short period at Ranchi—at their own will and convenience—and do not usually visit so much the aboriginal areas as they do those of the other three divisions of Bihar". We have referred to these statements not because we are in agreement with them or with a view to adjudicating on them but purely as indicative of the local atmosphere. Dr. Sinha has referred to the absence of the aboriginal element in the Ministry and has recommended reconstitution.

The extreme expression of the discontent prevalent in Chota Nagpur is the separatist movement which demands the formation of a new Province of Jharkhand out of the partially excluded area. This movement is sponsored at present by the Adibasi Mahasabha containing a very large advanced or Christian element but in Singhbhum and in the Santhal Parganas also, a good proportion of non-Christians seem to have been affected by it. To borrow Dr. Sinha's words it is "capturing the imagination" of the tribals. Unmistakably also the movement is gaining sympathy among the non-aboriginals; and even if it be partly due to mere local ambition, the virtual exclusion of tribal elements from the Cabinet has undoubtedly contributed much to it. We have already held in our interim report that the question of the formation of a separate Province is not for us to tackle but we would invite the attention of the Provincial and Central Governments to the separation movement, which seems to be gaining strength, as a symptom of the discontent which is simmering in varying intensity among all sections of the Chota Nagpur population. At the same time we have noticed that the Cabinet of the Bihar Government and such an eminent public man as Dr. S. Sinha oppose the separation movement on the grounds very well shown in the brochure of Dr. Sinha. We have also received a number of telegrams from these areas saying that they thoroughly disapprove of the separatist movement.

We are inclined to the view which seems to be shared by Dr. Sinha also, that there should be adequate association of the people of the partially excluded areas, particularly the tribals, in the different branches of the administration including the Cabinet and that there can be neither satisfaction nor adequate progress until it is done. In short, the problem of

administration in this tract must be dealt with not only by economic and educational improvements but also by remedies which recognize its political and psychological aspects; and we would lay the maximum emphasis on the urgency of action in both these directions.

UNITED PROVINCES

3. As regards the partially excluded areas of the United Provinces viz. the Jaunsar-Bawar Pargana in the Dehra Dun District and the area comprising the Dudhi Tahsil and part of the Robertsganj Tahsil of the Mirzapur District, we find that both of these comparatively small areas are suffering from serious neglect. Although a committee was set up as early as 1939 to enquire into the administration of the Jaunsar-Bawar Pargana and a report was submitted by it in 1941, it is a matter for regret that no action has yet been possible although the report was ultimately made only by the official members of the committee. We understand that another committee has been appointed recently this year to go into the matter by the Provincial Government and hope that speedy action will be taken on its report. The main matters which require attention in this area are as follows:

- (1) the fixation and collection of land revenue and distribution of "rights timber" through the agency of the Sayanas as well as the position of the Sayana in the village panchayat which gives rise to a great deal of oppression.
- (2) survey and resettlement of the area and removal of restrictions on the possession of land and reclamation of waste land by Koltas (local depressed castes of Hindus).
- (3) the elimination of social evils like polyandry and venereal disease.

In the partially excluded area of the Mirzapur District which is inhabited by a majority of tribals we find that the administration is of a pretty primitive character. The figures given in the U.P. Government's factual memorandum for the Dudhi Government Estate which are shown below indicate that the revenue from it is not utilized to the extent of even two-fifths of the administration of the area:

—	Income	Expenditure
1944-45	1,64,430	83,421
1945-46	2,96,002	88,002
1946-47	2,34,797	89,854
TOTAL	6,95,229	2,61,277 i. e., 37 per cent of the income.

We would draw particular attention to the statement of witnesses that a very large percentage of the population of this area is suffering from venereal disease. In the Dudhi Estate the U. P. Government have themselves noted that there is a passage of land from the hands of the aboriginals to the non-aboriginals. It would appear that the rules of the Dudhi Estate are ineffective in preventing this since land can be surrendered to the Supurdar who reallots the same to another person, most probably a non-aboriginal. Such a transfer unfortunately does not require the approval of the S. D. O. or the Collector. It does not appear that suitable steps have been taken to put a stop to this. Among other complaints are the working of the monopoly given to Messrs Gladstone Wyllie and Co., Ltd., for the collection and sale of lac which is terminable in the year 1952. The working of this monopoly under which only about one-seventh, or if we allow for overhead and working charges, not more than one-fourth, of the price realized by the company for the sale of the lac is obtained by the aboriginal cultivator tends to keep the aboriginal in a miserable condition. It does not appear to us that the Government have any comprehensive or fully considered programme for this area as yet.

The population of this tract is very small ($\frac{1}{3}$ per cent) in comparison with the total population of the United Provinces. We would not on that account recommend for its future administration the proposals which we have recommended for some of the backward tracts of other Provinces, but we are equally definite that special provisions for its development are essential, as without them it is certain that due attention will not be paid to its needs. Similarly although the inhabitants of the Jaunsar-Bawar Area, as pointed out in our interim report, are not tribals by race and we do not recommend inclusion in the schedule of our Interim Report, special provisions are necessary for this area also. We recommend therefore constitutional provisions for both of these tracts as follows :

- (1) there should be an advisory committee consisting of tribals or backward people to the extent of not less than two-thirds of its membership to advise the Government on the development of the area;
- (2) the estimated revenue and expenditure (including development schemes) pertaining to the area should be shown separately in the provincial budget;
- (3) although general administration of the type in force in other districts may be applied to the tract, the trial of petty civil and criminal cases should be permissible under special regulations;
- (4) there should be provision in the Constitution prohibiting the transfer of land from aboriginals to non-aboriginals except with the sanction of an authorized officer;
- (5) the powers of Supurdars in the Dudhi area of Mirzapur District to allot waste lands and accept surrender of land should be withdrawn

and in Jaunsar-Bawar the system of Sayanas should be abolished and the Sayanas replaced by Government employees;

(6) the U. P. Government should report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive;

(7) there shall be one seat reserved in the Provincial Assembly for a tribal from the area of the Mirzapur District which is now partially excluded.

4. *East Punjab* : The disturbed conditions in the East Punjab have prevented the appearance of witnesses from Spiti and Lahaul before us and it is equally not possible for us to visit the area. It is unlikely that settled conditions will prevail in the Punjab before the passes are blocked and we do not propose therefore to postpone our recommendations which will now be based on the factual memorandum sent by the Provincial Government.

We consider that constitutional provisions should be made as follows:

(a) An Advisory Committee of which at least two-thirds shall be local residents shall be set up to advise the Provincial Government regarding the administration of Lahaul and Spiti.

(b) The Provincial Government may declare any law passed by the Federal or Provincial Legislature as not applicable to the tracts or applicable with specified modifications.

(c) The Provincial Government may make special regulations for the administration of criminal and civil law and the protection of rights of local Tibetan inhabitants in land.

(d) The Provincial Government shall report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive.

(e) We confirm the recommendation made in paragraph 9 of the Interim Report that there should be a representative for Lahaul and Spiti in the Provincial Legislature.

5. *A Central Department* : After surveying the position in all the Provinces, we have been forced to the conclusion that unless there is a separate department of the Federal Government prescribed by statute to supervise and watch the development of the Scheduled Areas and the tribals in the different Provinces and to furnish such advice and guidance as may be needed, the pace of progress of the tribes will not be sufficiently swift. The Central Government have already recognized the need for a Directorate of Anthropological Survey and we recommend that provision for a Central Department of Tribal Welfare should be made in the Constitution.

6. *Recruitment to Armed Forces* : We are also of the view that special attention should be paid to the recruitment of the tribes to the armed forces of India. The tribes people can in our opinion furnish valuable material for this purpose as experience in the last war goes to show.

7. *Village and Tribal Headmen*: During the course of our enquiry many complaints of oppression and mishandling of the tribes people by the hereditary chiefs or heads of villages like the Mustadars Bissois and Paros and Muthadars of South Orissa, the Parganait and Pradhans of the Santhal Parganas and the Mankis and Mundas of Singhbhum have reached us. We are of the view that a general review of the powers and functions of such village or tribal heads should be undertaken by Provincial Governments with a view to removing the grievances of the tribal villagers, the abolition of powers which are exercised in an oppressive manner and the general reform of these ancient systems.

8. *Non-official welfare organizations*: We recommend that the Provincial Governments should utilize the services of approved non-official organizations which are at present doing welfare work in the Provinces for the tribals or which may hereafter come into existence by giving them grants-in-aid with a view to supplementing the volume of development work.

9. *Officials to learn tribal languages*: We have found that officials posted to aboriginal areas rarely know the local language. This obviously does not conduce to satisfactory administration and we are of the view that it should be made compulsory for officials posted to the aboriginal areas to obtain a working knowledge of the language within a reasonable period. Proficiency in these languages or dialects should be encouraged by the grant of suitable awards.

Yours truly,

A. V. THAKKAR.

Chairman,

E. & P. E. Areas (Other than Assam) Sub-Committee.

Members—

RAJKRUSHNA BOSE,

PHUL BHAN SHAH,

JAIPAL SINGH.

MINUTE OF DISSENT

I submitted a dissenting minute against the Interim Report which had included recommendations for those tribal areas also which had then not been visited. After the visit of the sub-committee to these areas, I am more than confirmed in my opinion that all the six districts of the Chota Nagpur Plateau, namely, Manbhum, Singhbhum, Palamau, Hazaribagh, Ranchi and the Santhal Parganas, should remain "Scheduled Areas". All the witnesses were emphatic that the Chota Nagpur Division as a whole should be scheduled and no district or territory should be excluded from the scheduled status. Even Dr. Sachchidananda Sinha, whose memorandum has received such attention from the other members of the sub-committee, has admitted that for administrative reasons all the six districts should be

scheduled. I have other reasons also for the same insistence but the most vital one is the necessity of protecting 1,479,485 Adibasis of the districts of Manbhum, Hazaribagh and Palamau with the veto of the Tribes Advisory Council. This 1941 census figure is large enough to justify the claim that 15 lakhs of Adibasis should not be exposed to the dangers of General Administration.

Partially Excluded Areas in Mirzapur District : The tribal tract in Mirzapur District should be transferred to the Scheduled Area of the Chota Nagpur Plateau. Administratively as well as geographically, the Bihar Government would be in a better position to manage this far-off corner of the United Provinces.

Chittagong Hill Tracts : The Indian Government must claim back the Chittagong Hill Tracts. The Radcliffe Award must be altered in regard to them.

September 25, 1947

JAIPAL SINGH.

NOTE BY CHAIRMAN ON MINUTE OF DISSENT BY SHRI JAIPAL SINGH

I do not think that any witnesses whom the Committee examined were explained our proposal that was under contemplation by the Committee about "Scheduling" of certain areas in some Provinces. "Scheduling" has a certain special meaning which was not explained to nor known by witnesses at all, not even to Dr. Sachchidananda Sinha. Therefore they could not distinguish between Scheduled and non-Scheduled areas in which tribes reside. Therefore the statement that all the witnesses were emphatic that the Chota Nagpur Division as a whole should be scheduled and that no district or territory should be excluded from the "Scheduled States" is incorrect, at any rate, very highly exaggerated.

The tribal people in Manbhum District form only 33.3 per cent of the total population. In Hazaribagh 27.8 is the similar percentage. The Latehar Sub-Division of the Palamau District has been recommended by the sub-committee as "Scheduled". But in the Sadar Sub-Division the percentage is only 26.0. Moreover there are very small compact areas in the two districts mentioned above and in the Sadar Sub-Division of Palamau District which have a tribal population of more than 40 per cent of the total population, the tribal people have assimilated themselves with the rest of the population so as to be indistinguishable in those areas. It is not therefore necessary to "schedule" the districts of Manbhum and Hazaribagh and the Sadar Sub-Division of Palamau District for the small percentage of the tribal people who are dispersed among the rest of the population and thus to brand these 2½ districts as backward.

As has already been shown in the body of the report the area of Dudhi Tahsil and parts of Robertsganj are too small to be made a Scheduled Area. It is a very fantastic proposal to detach this area from the United Provinces

and to tag it on to Bihar Province. It requires no argument to say that this proposal can form no part of this Committee's proposal.

Chittagong Hill Tracts is a purely 97 per cent Buddhistic or non-Muslim area and this Committee would have been too glad, had it formed a part of West Bengal; but the Boundary Commission gave its decision to the contrary and it was accepted by both the Dominions of India and Pakistan. The Committee has been very sorry to know this decision but the award of the Boundary Commission is unalterable.

A. V. THAKKAR,
Chairman.

Delhi, September 25, 1947

MINUTE OF DISSENT

The sub-committee submitted a provisional report prior to visiting Bihar. While submitting that report I raised a question to the effect that all districts of Chota Nagpur Division and Santhal Parganas should be included as Scheduled Areas. During Bihar tour evidence adduced before the sub-committee strongly confirmed my contention that the aforesaid areas deserve to be included as Scheduled Areas. The evidence including that of Dr. Sachchidananda Sinha strongly support this contention. Inclusion of the aforesaid tracts as Scheduled Areas is strongly warranted.

October 13, 1947

D. N. SAMANTA.

(IV) JOINT REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) AND THE NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEES *August 25, 1947*

In accordance with the ruling of the Chairman, Advisory Committee, we have held a joint meeting of our two sub-committees. Separate reports have already been submitted by us which in the case of the Assam sub-committee contains final recommendations, and in the case of the other sub-committee is final for the Provinces of Madras, Bombay, Bengal, the Central Provinces and Orissa, and is provisional for Bihar, the United Provinces and the Punjab which have yet to be visited or in respect of which witnesses are yet to be examined. The report of the latter sub-committee contains however the framework of the proposals likely to be adopted finally. Although that report is not final for all Provinces, this joint report is being submitted so that the recommendations could be taken into consideration by the Advisory Committee, if this is necessary, before the final report is available towards the end of September. We would further point out that the position of the excluded and partially excluded areas has undergone a change with the coming into operation of the Indian

Independence Act and the adapted Constitution of 1935. Under the Indian Independence Act so much of the provisions of the Government of India Act, 1935 as requires a Governor to act in his discretion or exercise his individual judgment ceases to have effect from the 15th of August. The partially excluded areas are represented in the Legislatures, however inadequately, but in the case of the excluded areas the change implies that they are brought under the jurisdiction of the Ministry without representation in the Legislature. Taking into account the past history of these tracts, the needs and susceptibilities of the people and other factors, it appears desirable that the Provincial Governments should at least be aware of our recommendations as soon as possible so that their policy may be guided thereby even if other steps are not found necessary in the Constituent Assembly for their implementation at an early date. We recommend that Provincial Governments should be advised to take such action as the establishment of District Councils and Tribal Advisory Councils as may be possible immediately to give effect to the policy recommended by us and to make such statutory regulations for this purpose as may be necessary.

2. Coming to the actual recommendations made by the two sub-committees, we are of the view that although certain features are common to all these areas, yet the circumstances of the Assam Hill Districts are so different that radically different proposals have to be made for the areas of this Province. The distinguishing feature of the Assam Hills and Frontier Tracts is the fact that they are divided into fairly large districts inhabited by single tribes or fairly homogenous groups of tribes with highly democratic and mutually exclusive tribal organization and with very little of the plains leaven which is so common a feature of the corresponding areas, particularly the partially excluded areas of other Provinces. The Assam hill districts contain, as a rule, upwards of 90 per cent of tribal population whereas, unless we isolate small areas, this is generally not the case in the other Provinces. The tribal population in the other Provinces has moreover assimilated to a considerable extent the life and ways of the plains people and tribal organizations have in many places completely disintegrated. Another feature is that some of the areas in Assam like the Khasi Hills or the Lushai Hills, show greater potentialities for quick progress than tribes in the other Provinces. They may also be distinguished by their greater eagerness for reform in which they have a dominant share than the apathy shown by the tribals of some other Provinces. Having been excluded totally from ministerial jurisdiction and secluded also from the rest of the Province by the Inner Line system, a parallel to which is not to be found in any other part of India, the excluded areas have been mostly anthropological specimens; and these circumstances together with the policy of officials who have hitherto been in charge of the tracts have produced an atmosphere which is not to be found elsewhere. It is in

these conditions that proposals have been made for the establishment of special local councils which in their separate hill domains will carry on the administration of tribal law and control the utilization of the village land and forest. As regards the features common to tribal areas in other Provinces, the Assam hillman is as much in need of protection for his land as his brother in other Provinces. He shares the backwardness of his tract and in some parts the degree of illiteracy and lack of facilities for education, medical aid and communications. Provision is necessary for the development of the hill tracts in all these matters and we have found it necessary to recommend constitutional safeguards of various kinds.

3. The differences between Assam and other areas as well as certain common features have been indicated above. While in Assam the hill districts present features of their own and the Assam Sub-Committee have confined their recommendations on the whole to these tracts, it has not been possible for the other sub-committee to deal with the problems of the tribes in exactly the same manner. The special features of the hills have been mentioned and they distinguish almost to the same degree the tribesmen in the hills and the tribesmen in the plains of Assam as they do the regular plains inhabitants. The total population censused as tribal in the plains of Assam is about 1.5 million out of which possibly some 50 per cent consists of tea-garden labour, drawn in part from other Provinces. This portion of the plains tribals is of course a population which has assimilated in high degree the life of the plains. The stable population of plains tribals is more or less in the same position. As regards other Provinces, the degree of assimilation is on the whole greater whether the tribesman is found in the hills or in the more accessible parts although some of the small tribes in the Agency Tracts of Orissa and Madras have hardly come into contact with the plains. In any case their outlook is totally different. From the very manner in which partially excluded areas have been formed it has not been possible to include large numbers of tribals who are scattered about in the Provinces irrespective of whether their condition was advanced or otherwise. It has been necessary therefore to treat all persons of tribal origin as a single minority and not separately as in the case of Assam. In this method of treatment therefore the recommendations for other Provinces differ radically from the proposals for Assam. The excluded and partially excluded areas however contain considerable concentrations of tribes people and generally they are in hilly and comparatively inaccessible areas with no communications and facilities for the development of the population. Land for them also is a vital factor and protection of the tribals' land is an essential need. The financial requirements of the Scheduled Areas are considerable, and the Centre will have to come to the assistance of certain Provinces at any rate. Thus the essential features of the proposals for the tribals of Provinces other than Assam are proportionate representation for the tribals as a whole in the Legislature, the scheduling

of certain areas as in need of special attention and in which the protection of land and the social organization of the tribals is an indispensable need. To facilitate the proper administration of the tribes, a Tribes Advisory Council with statutory functions is recommended for the Provinces of Madras, Bombay, the Central Provinces, Bihar, West Bengal and Orissa, and the application of Provincial legislation to the Scheduled Areas is linked up with this Advisory Council.

4. The common proposals for Assam and other Provinces is that of provision of funds by the Centre and a separate financial statement in the budget for the Hill Districts (Assam) and the Scheduled Areas (other Provinces). The inclusion of provisions for the control of moneylenders is another common feature.

5. We have attached copies of the Appendices to the separate reports which indicate the legal provisions necessary and a general summary of the recommendations of both the sub-committees [enclosure].

6. We recommended that the plains tribals of Assam* should be recognized as a minority and should be entitled to all the privileges of a minority including representation in the Legislatures in proportion to population and in the services; and that their land should be protected.

7. Subject therefore to the special provisions for the representation of the Hill Districts of Assam, all tribals should be recognized as a minority for the purposes of representation in the Legislatures and in the services.

G. N. BARDOLOI,

Chairman,

*N.E.F. (Assam) Tribal & Excluded Areas
Sub-Committee.*

A. V. THAKKAR,

Chairman,

*Excluded & Partially Excluded
Areas (Other than Assam)
Sub-Committee.*

ENCLOSURE

GENERAL SUMMARY OF THE REPORTS OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE AND THE NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE [INCLUDING THE FINAL REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE]

I

In Provinces other than Assam, with the exception of the Laccadive Islands of Madras and the Spiti and Lahaul area of the Punjab, there are no excluded areas. In both of these excluded areas the population is not ethnically tribal. In the Laccadive Islands the islanders are Muslims of the same stock as the Moppillahs of Malabar. In Minicoy they are believed to be of Sinhalese origin. In Spiti and Lahaul the inhabitants are of Tibetan origin. In the remaining partially excluded areas of Provinces other than Assam the principal tribes to be found are Santhal,

*This means that tea-garden labour and ex tea-garden labour which consists of tribals from Provinces other than Assam are excluded.

Gond, Bhil, Munda, Oraon, Kondh, Ho and Savara. Many minor tribes like Korku, Pardhan, Kol, Bhumij, Warli also inhabit the areas. The total population* of all the tribes, excluding Assam, is about 13½ million of which approximately 8 million inhabit the partially excluded areas. With the exception of certain small tribes like the Bonda Porja and the Kutia Kondh of Orissa, all the remaining tribes have experienced varying degrees of sophistication and come into contact with people of the plains and advanced tracts. Although the tribals living in the non-excluded areas are often hard to distinguish from the plains people among whom they live, they are generally in a backward condition which is sometimes worse than the condition of the Scheduled Castes. It is not possible therefore to leave them out of consideration on the ground that only the tribes in the partially excluded areas need attention. All the tribes of Provinces other than Assam, whether living in the plains or in the partially excluded tracts, should, as one whole be treated as a minority. As regards Assam, conditions in the hill districts of which the Naga Hills, the Lushai Hills and the North Cachar Hills have been excluded are on a totally different footing and the atmosphere, particularly in these excluded areas, is one which is not to be found elsewhere. These areas must therefore be treated separately from the rest. As regards plains tribals the total number of whom, excluding Sylhet, comes to approximately 1.5 million according to census figures, about seven lakhs are tea-garden labour from various parts of the country [not included in the Schedule B to the Government of India (Legislative Assemblies Order) 1936] are not to be taken into account as tribes of Assam. The tribal population of the excluded and partially excluded areas comes to about 8½ lakhs. In Assam there are in addition the frontier tracts and tribal areas in which conditions of settled administration prevail only to a very small extent and large areas cannot be said to be under regular administration at all. Even now, in the northern frontier tracts, Tibetan tax-collectors make inroads and, in the Naga tribal area, head-hunting goes on. The administration of these areas still involves contact with foreign States and problems of defence.

2. The areas inhabited by the tribes, whether in Assam or elsewhere, are difficult of access, highly malarial and infested also in some cases by other diseases like yaws and venereal disease and lacking in such civilizing facilities as roads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are exploited with ease by plainsfolk resulting in the passage of land formerly cultivated by them to money-lenders and other erstwhile non-agriculturists. While a good number of superstitions and even harmful practices are prevalent among them the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administration. The sudden disruption of the tribals' customs and ways by exposure to the impact of a more complicated and sophisticated manner of life is capable of doing great harm. Considering past experience and the strong temptation to take advantage of the tribals' simplicity and weaknesses it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginal's economic life and for his customs and institutions which, apart from being his own, contain elements of value. In making provisions however allowance could be made for the fact that in the non-excluded areas the tribals have assimilated themselves in considerable degree to the life of the people with whom they live and the special provisions concerning legislation in particular are therefore proposed largely for the Scheduled Areas in Provinces

*Including Assam, the total population of the tribes in the Provinces is 15.9 million.

other than Assam; (Report, paras 10 and 11) and the autonomous districts [(Assam) Para. 13 of Report and Section A of Appendix A].

3. Although in the case of the autonomous districts of Assam a distinction has been made the proposals in the main contemplate that tribals should be treated as a minority in the matter of representation in the Legislatures and recruitment to the various services of the Central and Provincial Governments. In the case of the tribals of Provinces other than Assam reserved representation in the Provincial and Federal Legislatures (House of the People) in proportion to the total tribal population of the Province is recommended by joint electorate. In the case of Assam similar reservation of representation for the plains tribals (excluding tea-garden labour) is recommended. In the case of the hill districts, in view of their small and exclusive populations it is recommended that representation should be provided in proportion to the population but in such a way that all fractions of a lakh are taken as one lakh even though this might involve a small weightage. In the Federal Legislature (House of the People) the autonomous hill districts should have a representative. The plains tribals should have representation in the House of the People also on the basis of their population. In all cases election by adult franchise is recommended and indirect election or nomination should not be resorted to. There should be special representation as follows:

Laccadive Group...1.

Amindivi Group...1.

Minicoy Island...1.

Lahaul & Spiti...1.

[Para. 9 of Interim Report of Other Than Assam Sub-Committee and para. 21 of Assam Sub-Committee Report; see also para. 6 of Joint Report.]

Non-tribals will not be eligible for elections from hill constituencies to the Provincial Legislature except the constituency which includes the municipality of Shillong. [Para. 21(e) and Sec. K(8) of Appendix A of Assam Report]. Constituencies may not be so made as to extend outside the boundaries of autonomous districts [Para. 21(d) and Sec. K(3) of Appendix A, Assam Report].

4. There should be a department under the Federal Government in order to supervise and watch the development of the tribals in the different Provinces and to furnish such advice and guidance as may be needed [Para. 5 of Final Report of Other Than Assam Sub-Committee].

5. The areas inhabited by the tribes are hilly and difficult country, to develop which is likely to be beyond the resources of some Provincial Governments. The Federation should therefore provide the necessary funds for the execution of approved schemes of development. [Para. 17 of Interim Report and Secs. I & K(2) of Appendix C of Other Than Assam Sub-Committee, also para. 14(c) and Sec. N of Appendix A of Assam Sub-Committee Report]. In the case of Assam, the Federation should also meet the average deficit of the autonomous districts during the three years preceding the commencement of the Constitution [Para. 14(c) and Sec. N of Appendix A of Assam Report].

6. The Central Government should also be in a position to require the Provincial Governments to draw up and execute schemes for the Scheduled Areas [Para. 17 of Interim Report and Sec. I & K(2) of Appendix C of Other Than Assam Sub-Committee].

7. The Federal Government should institute a special commission after ten years to enquire into the progress of the Scheduled Areas and the tribes [Para. 16 and Sec. K(1) of Appendix C of Other Than Assam Sub-Committee Report].

8. In Provinces other than Assam, excepting the U.P. and the Punjab a Tribes Advisory Council containing, to the extent of three-fourths of its membership,

elected members of the Provincial Legislatures is recommended. The Council shall have not less than ten or more than twenty-five members [Para. 15 and Sec. J of Appendix C of Other Than Assam Sub-Committee Report]. For U. P. and the Punjab an advisory committee containing representatives of the tribal or backward class concerned to the extent of two-thirds is recommended [Paras. 3 and 4 of Final Report; see also Para. 19 of this Summary for details of U. P. committee]. For Assam there is provision for the Governor to appoint either a permanent or an *ad hoc* commission to report or keep the Government in touch with the administration of the autonomous districts [Para. 24 and Sec. O(1) of Appendix A of Assam Sub-Committee Report].

9. The hill districts of Assam are to be designated as autonomous districts and special district councils should be set up for each of them. The district councils will have powers of legislation over (a) occupation or use of land other than land comprising reserved forest, (b) the management of forest other than reserved forest, (c) the use of canals and water courses for the purposes of agriculture, (d) control of *jhum* cultivation, (e) establishment of village and town committees and (f) village management in general. Reserved forests will be managed by the Provincial Government [Paras. 9 to 13 of Assam Sub-Committee Report].

The district council will have powers of management of all institutions which normally come under the scope of local self-government in the plains and will have full control over primary education [Para. 13 and Sec. E of Appendix A of Assam Sub-Committee Report].

The district council will also have powers to make its own rules and regulations regarding its own constitution [Sec. B(5) of Appendix A of Assam Sub-Committee Report].

The district council will have powers to make laws affecting (a) appointment and succession of chiefs, (b) inheritance of property, etc. [Para. 18 and Sec. C of Appendix A of Assam Sub-Committee Report].

District councils and regional councils can set up courts with full powers to deal with all civil suits other than those arising out of special laws and offences punishable under the Penal Code with imprisonment of less than five years in accordance with local or tribal custom except where non-tribals are involved [Para. 12 and Sec. D & F of Appendix A of Assam Sub-Committee Report].

Where there are different tribes in a district and they wish to manage their own affairs regional councils may be set up. Regional councils have powers limited to their customary law and the management of land, villages and courts. Regional councils may delegate their powers to district councils. [Para. 18 and Sec. B(3) of Appendix A of Assam Sub-Committee Report].

The district and regional councils (Assam Hill Districts) will have powers to levy land revenue, house tax or poll tax and other taxes levied by local self-governing institutions in the plains [para. 14(a) and Sec. H of Appendix A of Assam Sub-Committee Report]. They should be assisted by Provincial grants where necessary [Para. 14(d) of Assam Report].

The District or Sub-divisional Officer, as the case may be, will be *ex-officio* President of the district council of the Mikir and North Cachar Hills.

10. The district council shall be an elected body with not less than 20 or more than 40 members of whom not less than three-fourths shall be elected by universal adult franchise. Separate constituencies to be formed for separate tribes, with a population of not less than 500. Non-tribal residents of autonomous districts, if their population is not below 500, may be formed into a separate constituency for election to the district council [Para. 27 and Sec. B(1) and (2) of Appendix A of Assam Report].

11. In matters relating to land (Provinces other than Assam), social customs and village management, if the Tribes Advisory Council advises that any law passed by the Provincial Legislature should not be applied to a Scheduled Area the Provincial Government shall direct accordingly. The Provincial Government shall have powers to direct that any other legislation shall not apply to the Scheduled Areas on the advice of the councils [Paras. 9 and 10 and Sec. E of Appendix C of Other Than Assam Sub-Committee Report].

In the case of Assam legislation on these matters is left to the district council and Provincial laws will not apply unless the district council applies them with or without modifications. Legislation prohibiting the consumption of non-distilled liquors will also not apply unless the district council applies it [Para. 17 and Sec. L of Appendix A of Assam Sub-Committee Report].

12. If the Tribes Advisory Council so advises, moneylenders in Scheduled Areas should not be permitted to carry on business except under licence [Para. 26 and Sec. G of Appendix C of Other Than Assam Sub-Committee Interim Report].

In Assam the district council should have powers to take action to license moneylenders and non-tribal traders if the rules are approved by a majority of three-fourths of their members; this is to prevent the practice of these professions by non-tribals in a manner detrimental to the interests of tribals [Para. 15 and Sec. J of Appendix A of Assam Sub-Committee Report].

13. Allotment of waste land in a Scheduled Area should not be made to non-aboriginals except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council [Para. 25 and Sec. F of Appendix C of Other Than Assam Sub-Committee Report].

14. Mineral resources in the autonomous districts of Assam will be managed by the Provincial Government but the district councils will be entitled to a share of the revenue. Licences or leases shall not be given out except in consultation with the district council [Para. 16 and Sec. I of Appendix A of Assam Report].

15. The Governor of Assam should be empowered to set aside any act or resolution of a district council if the safety of the country is prejudiced; he should also have powers to dissolve a council if gross mismanagement is reported by the commission [Para. 19 and Sec. Q and R of Appendix A of Assam Sub-Committee Report].

In Provinces other than Assam the Governor should have the special responsibility to see that schemes of development are drawn up and implemented. This should be enjoined on him by instructions [Para. 19 of Other Than Assam Report].

16. The Central Government should continue to administer the frontier tracts and tribal area with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over with the approval of the Federal Government [Sec. P of Appendix A and Para. 20(a) of Assam Sub-Committee Report].

Provincial Governments (other than Assam) should have powers to make special regulations for the trial of petty criminal and civil cases in Scheduled Areas, with a view to simplify procedure [Sec. M of Appendix C of Other Than Assam Report].

17. The estimated revenue and expenditure pertaining to a Scheduled Area or an autonomous district should be shown separately in the provincial budget [Para. 18 and Sec. H of Appendix C of Other Than Assam Sub-Committee Report and Para. 14(b) and Sec. M of Appendix A of Assam Sub-Committee Report].

18. There shall be a separate Minister for tribal welfare in the C. P., Orissa and Bihar [Para. 20 and Sec. L of Appendix C of Other Than Assam Sub-Committee

Report]. In Assam representation for the hill people in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the Instrument of Instructions [Para. 22; see also Sec. O(3) of Appendix A of Assam Sub-Committee Report].

19. For the partially excluded areas of the U. P. an advisory committee consisting of tribals or backward people to the extent of two-thirds of its membership, provision to prevent the transfer of land from the aboriginals to non-aboriginals (except with special permission), for regulations for the trial of petty civil and criminal cases by simple procedure, are recommended. The revenue and expenditure of the area should be shown separately in the provincial budget and there should be a seat reserved in the Provincial Assembly for a tribal from the partially excluded area of the Mirzapur District. There should also be provision for the Federal Government to call for reports from the Provincial Government regarding the administration of the areas.

Parallel provisions are recommended for Spiti & Lahoul (E. Punjab) which should have one seat in the Provincial Legislature [Paras. 3 and 4 of Final Report of Other Than Assam Sub-Committee].

II

Other Recommendations

20. Tribal panchayats should be encouraged wherever possible [Para. 22 of Interim Report of Other Than Assam Sub-Committee]. Shifting cultivation should be discouraged [Para. 23 of Interim Report of Other Than Assam Sub-Committee and Para. 11 of Assam Sub-Committee Report]. Temperance propaganda should be carried on as part of tribal welfare work [Para. 24 of Other Than Assam Sub-Committee Report].

21. Tribals should be recruited in due proportion to all Government services. Non-tribals posted to tribal areas should be selected with care [Para. 23 of Assam Report and Para. 21 of Other Than Assam Report].

Special attention should be paid to the recruitment of tribes to the Armed Forces of India [Para. 6 of Final Report of Other Than Assam Sub-Committee].

22. The abolition of the powers of Supurdars (Dudhi area of Mirzapur District, U. P.) to accept surrender and make a realloftment of land is recommended. The system of Sayanas in Jaunsar-Bawar (U. P.) should be abolished and revenue collected through officials.

23. A general review of the powers and functions of ancient systems of village or tribal headmen should be undertaken with a view to removing the grievances of tribals and the abolition of oppressive powers and general reform [Para. 7 of Final Report of Other Than Assam Sub-Committee].

24. Provincial Governments should utilize the services of approved non-official organizations doing welfare work among the tribals, with a view to adding to the volume of development work, by giving them grants-in-aid [Para. 8 of Final Report of Other Than Assam Sub-Committee].

25. It should be made compulsory for officials posted to aboriginal tracts to obtain a working knowledge of the local language within a reasonable period.

26. *Posa* payments to the frontier tribes should be continued [Para. 20(c) of Assam Sub-Committee Report].

The pace of extending administration in the frontier tracts should be greatly accelerated and additional officers appointed where necessary [Para. 20(a) of Assam Sub-Committee Report].

The Provincial Government should undertake an examination of the position in the frontier tracts with a view to taking a decision whether any portion could be

taken immediately by it under Provincial administration [Para. 20(b) of Assam Sub-Committee Report].

Note: The contents of Appendix A of the Assam Report and of Appendix C of the Interim Report of Other Than Assam Sub-Committee must be studied for a full picture of the constitutional provisions recommended.

(V) MINUTES OF THE ADVISORY COMMITTEE December 7, 1947

Present: (1) The Hon'ble Sardar Vallabhbhai Patel, *Chairman*; (2) Shri Prithvi Singh Azad; (3) Shri Dharam Prakash; (4) Shri H. J. Khandekar; (5) Shri P. R. Thakur; (6) Dr. B. R. Ambedkar; (7) Shri V. I. Muniswami Pillai; (8) Sardar Harnam Singh; (9) Sardar Ujjal Singh; (10) Gyani Kartar Singh; (11) Dr. H. C. Mookherjee; (12) Shri P. K. Salve; (13) Shri J. L. P. Roche Victoria; (14) Mr. M. V. H. Collins; (15) Shri R. K. Sidhva; (16) Shri Phool Bhan Shah; (17) Shri Jaipal Singh; (18) Rajkumari Amrit Kaur; (19) The Hon'ble Pandit Govind Ballabh Pant; (20) Prof. K. T. Shah; (21) Shri K. M. Munshi; (22) Shri Amritlal V. Thakkar; (23) Shri Raj Krushna Bose; (24) Saiyid Muhammad Saadulla; (25) Dr. Mohan Sinha Mehta; (26) Shri M. S. Aney; (27) Darbar Gopaldas Desai; (28) Shri Gokulbhai Bhatt; (29) Seth Govind Das; (30) Pandit Thakurdas Bhargava; (31) Sir Kameshwara Singh of Dharbhanga.

In attendance: (1) Shri S. N. Mukerjee, Joint Secretary; (2) Shri R. K. Ramadhyani, Joint Secretary, Ministry of Defence; (3) Shri Jugal Kishore Khanna, Deputy Secretary.

The Chairman informed the committee that it was decided to hold the next session of the Constituent Assembly some time in April 1948 immediately after the budget session of the Dominion Legislature was over. He was, therefore, of the view that since Assam members of the committee had not been able to attend, the committee might be held some time immediately before the next budget session begins or on any other date during the session. This was agreed to by the members.

Dr. B. R. Ambedkar, Chairman of the Drafting Committee, informed the committee that about 82 clauses had been dealt with by his committee and that it was expected that the drafting work would be completed by the 25th of December, 1947. He, therefore, stressed the necessity of considering the two reports (Excluded and Partially Excluded Areas—Assam and other than Assam) before that date so that their decisions might be embodied in the Draft Constitution.

The Chairman suggested that the Drafting Committee be authorized to incorporate clauses in the Draft Constitution on the basis of the recommendations of the two reports and that any change made by the Advisory Committee might later on be made in the final draft. This was agreed to by the members.

It was also decided that clause 161 of Chapter VI of Part V of the

Draft Constitution (Scheduled and Tribal Areas), Seventh Schedule, Eighth Schedule, Clause 231 and Tenth Schedule should be circulated to the members for their information.

February 24, 1948

Present : (1) The Hon'ble Sardar Vallabhbhai Patel, *Chairman*, (2) Shri Surendra Mohan Ghose; (3) The Hon'ble Dr. Syama Prasad Mookerjee; (4) The Hon'ble Shri Prithvi Singh Azad; (5) Shri H. J. Khandekar; (6) The Hon'ble Shri Jagjivan Ram; (7) Shri P. R. Thakur; (8) The Hon'ble Dr. B. R. Ambedkar; (9) Shri V. I. Muniswami Pillai; (10) The Hon'ble Sardar Baldev Singh; (11) The Hon'ble Sardar Partap Singh; (12) Sardar Harnam Singh; (13) Sardar Ujjal Singh; (14) Gyani Kartar Singh; (15) Dr. H. C. Mookherjee; (16) Mr. P. K. Salve; (17) Mr. Frank Reginald Anthony; (18) Mr. M. V. H. Collins; (19) Shri M. R. Masani; (20) Shri R. K. Sidhva; (21) Shri Rup Nath Brahma; (22) Khan Abdul Samad Khan; (23) The Hon'ble Rev. J. J. M. Nichols Roy; (24) Shri Phool Bhan Shah; (25) Shri Jaipal Singh; (26) The Hon'ble Maulana Abul Kalam Azad; (27) The Hon'ble Rajkumari Amrit Kaur; (28) The Hon'ble Shri Gopinath Bardoloi; (29) The Hon'ble Shri Purushottamdas Tandon; (30) Sir Alladi Krishnaswami Ayyar; (31) Shri K. M. Munshi; (32) Shri Amritlal V. Thakkar; (33) Shri M. Ruthnaswamy; (34) Shri Raj Krushna Bose; (35) Mr. Hifzur Rahman; (36) The Hon'ble Mr. Abdul Qayum Ansari; (37) Shri Hussainbhoy A. Lalljee; (38) Haji Abdul Sathar Haji Ishaq Sait; (39) Maharajadhiraja Sir Kameshwara Singh of Dharbhanga; (40) Dr. Mohan Sinha Mehta; (41) Sri Gokulbhai Bhatt; (42) Seth Govind Das; (43) Pandit Lakshmi Kant Maitra; (44) Pandit Thakurdas Bhargava; (45) Shri Sarangdhar Das.

In attendance : (1) Sir B. N. Rau, Constitutional Adviser; (2) Shri S. N. Mukerjee, Joint Secretary; (3) Shri Jugal Kishore Khanna, Deputy Secretary; (4) Shri K. V. Padmanabhan, Under Secretary.

In inviting the attention of the members to the reports of the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee and the Excluded and Partially Excluded Areas (Other Than Assam) Sub-Committee, copies of which had been circulated, the Chairman informed the Advisory Committee that there was not much left to be done by them, as the Drafting Committee had already adopted the recommendations of the two sub-committees and embodied them in Schedules V, VI and VIII of the Draft Constitution, copies of which had also been circulated. The Chairman asked the Advisory Committee first to consider the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee's report.

2. The Hon'ble Dr. Syama Prasad Mookerjee wanted to know the implication of paragraph L (1) (b) of Appendix A to the report and suggested that there was no reason why legislation passed by the Assam Legislature prohibiting or restricting the consumption of any non-distilled alcoholic

liquor should not apply to an autonomous district. A short discussion ensued in which several members took part. The Hon'ble Mr. G. N. Bardoloi, Chairman of the sub-committee, pointed out that although it was laid down in the paragraph that any legislation for these purposes passed by the Provincial Legislature would not apply automatically to an autonomous district, nevertheless the next sub-paragraph of the same paragraph made it clear that the Regional Council of the autonomous district, or if there was no Regional Council, the District Council, would have power to apply the legislation with or without modification to the district.

3. The Hon'ble Dr. B. R. Ambedkar stated that, apart from the legal aspects of the matter, it was necessary to take into consideration the sentiments of the tribal people. According to him the clause was the result of a compromise effected by the sub-committee that while the tribal people were for general purposes within the purview of the Legislature of Assam, for certain specific purposes of their own they would be governed by District or Regional Councils in the autonomous districts which would have power to regulate certain matters which the tribal people regard as of great importance to their lives. He further pointed out that the tribal people considered the use of liquor to be essential to the performance of certain religious ceremonies and he thought that the committee would be well advised to respect the wishes and the decisions of the representatives of these people. The committee decided to retain paragraph L in its original form.

4. The Hon'ble Rev. Nichols-Roy moved that the following proviso be added to paragraph D(1) of Appendix A of the report:

Provided that the Assam High Court shall have power of revision in cases where there is failure of justice or where the authority exercised by the District Court is without jurisdiction.

The amendment was agreed to.

5. The Hon'ble Dr. S. P. Mookerjee moved for the deletion of sub-paragraph (3) of paragraph K of the report, which debar non-tribals—even those settled in the district—from standing for election from the district. He was supported by Messrs K. M. Munshi, Hussainbhoy Lalljee, Seth Govind Das and Thakurdas Bhargava.

6. The Hon'ble Shri G. N. Bardoloi, the Hon'ble Rev. Nichols-Roy, Shri Jaipal Singh, the Hon'ble Dr. B. R. Ambedkar, Shri Amritlal V. Thakkar and Sardar Harnam Singh supported the recommendation of the sub-committee. The sub-paragraph was retained.

7. The Hon'ble Shri G. N. Bardoloi moved that in Schedule B to Appendix A of the report the words "excluding the plains portion" be added after each of the items in the Schedule. Explaining the object of the amendment, Shri Bardoloi quoted certain observations of the sub-committee at paragraph 3 of the report in respect of the plains portions and thought that there was no

justification for keeping them under special administration. It was decided to amend Schedule B of the report accordingly.

8. At the suggestion of the Hon'ble Dr. B. R. Ambedkar it was agreed that the decisions arrived at might be noted for the present and that the consequential amendments might be made later, when the Draft Constitution came up before the Constituent Assembly for consideration.

The committee then proceeded to consider the report of the other sub-committee.

Haji Abdul Sathar Haji Ishaq Sait favoured a separate Advisory Council for the Laccadive Islands (including Minicoy and the Amindivi Islands) as the people of these islands had nothing in common with the other tribals. Mr. Sait reserved to himself the right to move an appropriate amendment to this effect in the Constituent Assembly.

11. Shri Rup Nath Brahma wanted more statutory safeguards for the plains tribals of Assam specially in respect of their land problem. The Hon'ble Shri Bardoloi and Shri Amritlal V. Thakkar informed the committee that sufficient safeguards had been provided in the sub-committee's report.

12. Shri Jaipal Singh drew the attention of the committee to his minutes of dissent to the report. The committee agreed with the majority view embodied in the sub-committee's report.

13. Pandit Thakurdas Bhargava took exception to the grant of separate representation to about 15,000 people living in the Spiti and Lahoul tracts of the East Punjab. The committee agreed with the recommendations of the sub-committee.

